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IN THE

Supreme Court of the United States,

OCTOBER TERM 1933.

No. 2.

JOHN FACTOR, Petitioner,

vs.

H. C. W. LAUBENHEIMER, United States Marshal.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF FOR THE RESPONDENT ON REARGUMENT.

Opinions Below.

The opinion of the United States Circuit of Appeals [R. 1166] is reported in 61 Fed. (2d) 626. Its opinion on the motion to dismiss the appeal because the Dawes-Simon Treaty of 1932 had become effective, is at page 1288 of the record.

The Questions Presented.

Extradition of the petitioner from Illinois is sought by the British Government, on the charge of having received property knowing it to have been fraudulently obtained.

1. Assuming that the applicable treaty requires as a condition to extradition, that the acts forming the basis of

the charge would have been criminal if committed in Illinois, the question arises whether that condition is satisfied in this case, the record showing that the only basis for imputing to petitioner guilty knowledge, is that he was a party to the original fraud by which the property was obtained, so that conviction in England for receiving will be dependent on establishing his guilt of the original fraud, which is an offense under the laws of England, is an offense defined as extraditable in the treaty, and is likewise made an offense by Illinois law.

2. The inquiry as to the question whether the offense charged must have been made criminal by Illinois law presents several features:

FIRST: By which treaty is the case governed? Has the Treaty of 1932 taken effect in the United States? Does the first paragraph in Article 18 of that treaty mean that it shall not take effect in either country until published in both? May the courts of the United States go behind the President's proclamation, proclaiming this treaty in effect, for the purpose of ascertaining if it has been published in Great Britain? If the 1932 Treaty has become applicable, do the extradition proceedings abate because instituted while the former treaty was operative?

SECOND: Is the condition that extradition will only be granted for conduct criminal in both countries, anything more than a general policy of nations, which must be embodied in an extradition treaty to preserve it? Has that condition been preserved by the terms of the treaty here applicable? Does the provision requiring proof of criminality sufficient to satisfy a committing magistrate itself impose the condition, or must the condition be found elsewhere in the treaty? What conclusion is to be drawn from the fact that in defining extraditable crimes, the treaties have, in respect of some, expressed the condition that the act must be made criminal in both countries, but in respect of others have omitted such a provision? Such

a condition not being found in the paragraph of the treaty naming as an extraditable offense the receiving of property knowing it to have been fraudulently obtained, are we justified in concluding that the High Contracting Parties contended when drafting the treaty, that this particular offense was recognized in both countries as criminal, and should be accepted as an extraditable offense without any further condition, and that the United States was willing to accept it as an extraditable crime, notwithstanding in some states, as in Illinois, it has not been made a criminal offense?

Statutes and Treaties.

The English statute under which this charge is made is Section 33(1). of the Larceny Act of 1916, which reads as follows:

> "Every person who receives any property knowing the same to have been stolen or obtained in any way whatsoever under circumstances which amount to felony or misdemeanor shall be guilty of an offense of the like degree (whether felony or misdemeanor) and on conviction thereof liable." [R. 124, 399].

The obtaining of property by fraud or conspiracy to defraud is a felony or misdemeanor under other statutes. (See, *Appeal of Kutas,* 17 Crim. App. Rep. 179.)

The British Extradition Act of 1870 is set forth in full on page 90 of the appendix to the petitioner's brief on reargument. See chapter 52, 33 & 34 Vict. It will be found in 4 Chitty's Statutes, Sixth Edition, p. 729. There are a number of supplemental acts to the Extradition Act of 1870 which add additional lists of crimes to the definitions of extradition crimes: The Extradition Act of 1873, 36 & 37 Vict., c. 60; the Extradition Act of 1895, 58 & 59 Vict., c. 33; the Extradition Act of 1906, 6 Ed. 7, c. 15; see, Chitty, Sixth Edition, Vol. 4, p. 742-745. The pertinent provisions of the extradition acts are set forth at length in the argument in this brief.

The Extradition Act of the United States will be found as U. S. C. A. Title 18, Sec. 651-659. House Document No. 114, 28th Congress, Second Session, containing the statement of Secretary of State Calhoun, August 7, 1844, is in the appendix to this brief, p. i.

The successive extradition treaties between the United States and Great Britain are set forth in the appendix hereto as follows:

Article XXVII, Jay Treaty of 1794 (Appendix p. xx);

Article X, Webster-Ashburton Treaty of 1842 (Appendix p. xxi);

Blaine-Pauncefote Extradition Convention of 1889 (Appendix p. xxi);

Supplementary Extradition Treaty of December 13, 1900 (Appendix p. xxv);

Supplementary Extradition Convention of April 12, 1905 (Appendix p. xxvii);

Dawes-Simon Extradition Treaty of 1932, with Presidential Proclamation (Appendix p. xxix).

Statutes of some States punishing receiving property knowing it to have been fraudulently obtained (Appendix p. xxxviii).

Statement of the Case.

This proceeding was instituted by the British Consul-General in Chicage before a United States commissioner in the Northern District of Illinois in May, 1931 [Consul-General's Complaint, R. 12]. He charged Factor with having, at the City of London, between July 14, 1930 and October 27, 1930 received sums from the Broad Street Press, Ltd., knowing the same to have been fraudulently obtained, aggregating at least £242,500, and if none of the specified items are duplicates, over £458,000. The complaint charged that Factor was a fugitive from justice; that the offense charged was an extraditable one under the treaties between

the United States and Great Britain. Among the documents forming a basis for the complaint was an authenticated copy of the information filed in the City of London by the Director of Public Prosecutions [R. 101] which charged specifically the receipt by Factor of these sums "knowing the same to have been obtained under circumstances which amount to a misdemeanour, to wit, conspiracy to defraud * * * in each case contrary to Section 33(1) of the Larceny Act of 1916". Upon this complaint the Commissioner issued his warrant and the extradition hearing was had. The results of the inquiry are summed up in the opinion of the Commissioner [R. 64].

The testimony disclosed that the Broad Street Press, Ltd., had a brief but remarkable career, beginning in 1928 and continued until the fall of 1930. Its methods were simple but effective. It built up contacts with persons desiring to invest or speculate in stocks. It cultivated the good-will and confidence of its customers, or prospective victims, by selling them stocks and later buying them back at an increased price. It increased the confidence of its clientele by predicting the rise in the stocks and then making good its predictions later by re-purchasing them. Having built up a large clientele by this "come-on" game (the British call it "share pushing", *Appeal of Newberry*, 23 Crim. App. Rep. 105), it proceeded then to sell to its patrons large amounts of worthless stocks, collecting in that way sums running into the millions of pounds. The division of the loot on a large scale seems to have been commenced during the month of June, 1930, and continued until the latter part of October. The Commissioner found that between June 13 and October 27, 1930, Factor, under the name of H. Wise, received by check from the Broad Street Press, Ltd. sums amounting to £709,180. On the latter date the officers of the company met, and it appeared that there was a balance of £6,569 in the bank to the credit of the Broad Street Press, Ltd., Factor took £6,000 of that amount, leaving £569 in the till for the victims [R. 23], and the conspirators then scattered. The record shows that Factor,

operating under the various names of Harry Wise, Guest and J. Walker [R. 141], was the leading conspirator of this enterprise and was one of the men engaged in perpetrating these frauds and enabling the Broad Street Press, Ltd. to obtain these moneys. The details of this scheme are more fully disclosed in the Commissioner's opinion [R. 69-72]; affidavit of Newman [R. 94-96].

The operations of the Broad Street Press, Ltd. were conducted to considerable extent through the mails or "post" [R. 95; 104-105; 108; 111]. The methods followed correspond closely with the conventional crime defined by Act of Congress as using the mails in furtherance of a scheme to defraud.

Having stripped their victims, the conspirators, or some of them, escaped to foreign parts. Klein, one of the principal offenders, proceeded to New York, where extradition proceedings were instituted on the charge of receiving property knowing it to have been fraudulently obtained. The extradition proceedings there were successful, there being no difficulty about the existence of a New York statute making criminal like transactions in New York. (*United States, ex rel. Klein* v. *Mulligan*, 1 Fed. Supp. 635; affirmed 50 Fed. (2d) 687; certiorari denied. *Appeal of Klein*, 23 Crim. App. Rep. 185). Another, Geen (or Green) went to Pennsylvania and the extradition proceeding, on the same ground, was successful there. (*United States, ex rel. Geen* v. *Fetters*, 1 Fed. Supp. 637). Factor went to Illinois. The British Government, in selecting the charge to be made against him, appears to have acted advisedly. There was a statute in Great Britain making it a crime to receive property knowing it to have been obtained by conduct amounting to a misdemeanor or felony, such as fraud or false pretenses. It had ample evidence of the receipt of moneys by Factor from the Broad Street Press, Ltd., and that he himself had guilty knowledge of its origin, because of his participation in the fraud by which the Broad Street Press, Ltd. obtained the money.

The Extradition Treaty of 1889 in paragraph 3 defines as extraditable offenses the following:

> "3. Embezzlement; larceny; receiving any money, valuable security, or other property, knowing the same to have been embezzled, stolen, or fraudulently obtained."

To make the situation apparently entirely clear, the prosecuting agencies had before them the decision of this court in *Kelly* v. *Griffin*, 241 U. S. 6, in which the extradition had been allowed on demand of Canada of a person apprehended in the State of Illinois on the charge of receiving money knowing it to have been fraudulently obtained, and in which the court said:

> "The receiving of property known to have been fraudulently obtained is a crime by the laws of both Canada and Illinois."

Fortified by these considerations, the extradition proceeding went ahead. The contention was then developed for the petitioner that the statement in *Kelly* v. *Griffin* was erroneous; that there is no statute in Illinois defining or punishing the crime of receiving property knowing it to have been fraudulently obtained; that the Illinois receiving statute relates only to stolen property or property obtained by larceny or robbery, or something of that kind, and that the definition of larceny in Illinois had never been extended to include obtaining property by false pretenses or fraud, nor has its receiving statute been brought up to date by covering the receiving of property knowing it to have been obtained by fraud.

The Commissioner found probable cause and ordered the accused held for extradition. On writ of *habeas corpus* the United States District Court for the Northern District of Illinois ordered him released. On appeal to the Circuit Court of Appeals for the Seventh Circuit, he was ordered held for extradition. Its decision proceeds on the premise that, in order to grant extradition, it must appear that the

acts committed abroad on which the charge is based would have been criminal if committed in Illinois; that the decision in the case of *Kelly* v. *Griffin*, to the effect that the laws of Illinois punish the receiving of property knowing it to have been fraudulently obtained was binding on the Circuit Court of Appeals. The Court of Appeals suggested that this Court may have been relying on the Illinois statute relating to fraudulent conveyances. Referring to the Fraudulent Conveyance Act, the Court of Appeals said:

> "* * * it seems to us that, in the broad sense, the acts charged against Factor if committed in Illinois might be penalized under that section."

The reference by this Court in its order for reargument to the memorandum on Article X of the Treaty of 1842 by Secretary of State John C. Calhoun, points at once to the necessity of analyzing the provisions of the applicable treaty and ascertaining to what extent it does require criminality in both countries.

Summary of Argument.

I. Extradition treaties should be liberally construed and applied to effect their purpose to suppress crime. The United States is as interested in preventing malefactors from obtaining asylum here as foreign nations are to bring them to justice. Any ground for extradition supported by reason and consistent with the purpose of the extradition treaty, should be accepted, rather than some other theory equally plausible, which would defeat justice.

II. Assuming that the treaty requires that the acts charged, in addition to being violations of English law and extraditable offenses defined in the treaty, must also be made criminal by Illinois law, that condition is satisfied in this case. The charge is receiving property from Broad Street Press, Ltd. knowing it to have been fraudulently obtained. The record shows that conviction depends on

establishing guilty knowledge of the receiver by proof that he was a party to the fraud by which the Broad Street Press, Ltd. obtained it. These two separate steps in the criminal transaction are both made criminal by English law, are both defined in the treaty as extraditable offenses, and one, that of obtaining property by fraud or false pretenses, is made criminal in Illinois. Conviction will require proof of guilt of acts criminal in Illinois, and in addition something not made criminal there. On the peculiar facts of this case this satisfies the purpose of the policy requiring that the acts on which the charge is founded would have been criminal at the place of asylum. The British Government could not shift its position at the trial without a breach of good faith, which, it must be assumed, would be avoided.

III. There is ground for the view that the 1932 Treaty went into effect in the United States while this case was pending on appeal. It was so proclaimed by the President in August, 1932. Treaties take effect usually on exchange of ratifications. If this one did not, it is because of Article 18, and the fact that the Treaty has not been published, or placed in operation by an Order in Council in Great Britain. That Article is susceptible of the interpretation that the treaty operates in each country when there published. It is doubted that our courts may go behind the executive proclamation for proof as to whether the treaty has been executed in England by an Order in Council. Under the law of Great Britain, English courts are forbidden to go behind their Orders in Council to ascertain whether a treaty has been published here. If the 1932 Treaty operates here, it constitutes the law on which the case must now be judged. The change in treaties did not abate the pending extradition proceeding, as the record made satisfies all requirements of the new treaty.

IV. The policy of nations to grant extradition only when the misconduct charged is made criminal by the laws of both countries, is not a rule of law to be read into a treaty. To give effect to the policy the treaty must so provide.

The proviso in all our extradition treaties with Great Britain, requiring proof of criminality, has never been treated as imposing such a condition. The insertion of express conditions to that effect in the schedules of extraditable crimes shows that to be so. The omission of such a condition in some of the paragraphs which define extraditable crimes and the inclusion in others, must be given due significance. The treaties of 1889 and 1932 are each susceptible of the interpretation that in respect of those "treaty crimes" where the condition was omitted, the High Contracting Parties determined in advance that the misconduct described was of such a nature as to satisfy the policy respecting criminality in both countries. *Wright* v. *Henkel*, 190 U. S. 40, involved a paragraph in the Treaty of 1889 which contained the express condition that the offenses described be made criminal by laws of both countries. It was competent for the United States to omit the condition as to some offenses, even if the acts were not criminal in some states of the Union.

ARGUMENT.

I.

Extradition treaties should be liberally construed and the law liberally applied to effect their purpose in the interests of international justice and the suppression of crime.

The evidence before the United States Commissioner was practically undisputed. Factor did not take the stand, and only offered two witnesses. They made no reference to the operations of the Broad Street Press, Ltd., but attempted, as mining experts, to give some value to some of the stocks foisted upon the public. On this record Factor is a criminal guilty of robbing hundreds or thousands of people of sums aggregating millions of dollars.

We have forty-nine different jurisdictions in the United States,—the forty-eight states and the areas like the District of Columbia, in which the Federal Government has exclusive sovereignty. If it be the law that no man may be extradited from the United States who takes asylum here unless the acts charged against him are made criminal by the law of the particular jurisdiction in which he is found, he has the choice of forty-nine asylums. If he can find one state whose criminal laws fail to punish the act he is charged with, he may escape extradition and trial, although his acts would have been criminal if committed in any of the other forty-eight jurisdictions. He may find sanctuary under the shadow of the Dome of the National Capitol, if Congress has neglected to make criminal in the District of Columbia, his acts committed abroad, although every state has done so.

Receiving property knowing it to have been fraudulently obtained is a crime in many of the states of the Union. It is as serious misconduct to receive property knowing it to have been obtained by fraud or false pretenses, as to receive property knowing it was stolen, in the old common law sense. Indeed, the modern criminal, working on a large scale in big organizations, operates that way. He is not content with small pickings from theft, or robbery.

The United States is as much interested in preventing criminals from abroad finding asylum here, as the countries in which the crimes were committed are to recapture them. It would appear as a complete failure of international effort to suppress crime if we are forced to the conclusion that the petitioner cannot be extradited from Illinois on the charge preferred against him.

This Court has repeatedly said that these extradition treaties are to be liberally construed.

In *Grin* v. *Shine*, 187 U. S. 181, it was said:

> "There is such a general acknowledgment of the necessity of such treaties that of late, and since the facilities for the escape of criminals have so greatly increased, most civilized powers have entered into

conventions for the mutual surrender of persons charged with the most serious nonpolitical crimes. These treaties should be faithfully observed, and interpreted with a view to fulfil our just obligations to other powers, without sacrificing the legal or constitutional rights of the accused.

"In the construction and carrying out of such treaties the ordinary technicalities of criminal proceedings are applicable only to a limited extent. Foreign powers are not expected to be versed in the niceties of our criminal laws, and proceedings for a surrender are not such as put in issue the life or liberty of the accused. They simply demand of him that he shall do what all good citizens are required, and ought to be willing to do, viz., submit themselves to the laws of their country. * * * Where the proceeding is manifestly taken in good faith, a technical noncompliance with some formality of criminal procedure should not be allowed to stand in the way of a faithful discharge of our obligations. Presumably at least, no injustice is contemplated, and a proceeding which may have the effect of relieving the country from the presence of one who is likely to threaten the peace and good order of the community, is rather to be welcomed than discouraged."

In *Benson* v. *McMahon*, 127 U. S. 457, it was said:

"It is for an offence against Mexican law that the prisoner is held to answer. As he is not now upon final trial, but the only question is whether he has committed an offence for which, according to this treaty, he should be extradited to that country and there tried, we do not see that in this application to set the prisoner at large, after he has been once committed by an examining court having competent authority, and after having been held to answer in Mexico for the offence charged, this court is bound to examine with very critical accuracy into the question as to whether or not the act committed by the prisoner is technically a forgery under the common law. Especially is this so when the wickedness of the act, the fraudulent intent with which it was committed and the final success by which the fraud was perpetrated, are undoubted."

If there be any ground supported by reason and consistent with the spirit and purpose of the extradition treaty on which extradition may be granted in this case, that ground should be accepted rather than some other theory, although equally plausible, which defeats the object of the extradition system. (See, 27 Op. A. G. 4.)

II.

On the record in this case, Factor cannot be convicted abroad on the charge of receiving, without at the same time convicting him of being a party to the original fraud, an offense which, if committed in Illinois, would be punishable there.

Assuming for the moment that it is not sufficient for extradition that the offense of receiving property knowing it to have been fraudulently obtained is defined as an extradition offense in the treaty, and that it is necessary as a further condition to extradition that the acts constituting the basis of the charge be criminal in Illinois; and assuming also that there is no statute in Illinois specifically punishing the receiving of property knowing it to have been fraudulently obtained, it does not follow that extradition must be refused.

Factor is charged with receiving money knowing it to have been fraudulently obtained. This involves establishing his guilty knowledge as to the fraud by which the Broad Street Press, Ltd. obtained the money. The whole case of the British Government rests on the alleged identity of Factor with a man variously known as Wise, Guest and Walker, shown by this record to have been one of the leading officials and directors of the Broad Street Press, Ltd. and active in its operations. The case against him for receiving can only be made by showing him to have been a party to the fraud by which Broad Street Press, Ltd. obtained the property. The acts of the Broad Street Press,

Ltd. in which Factor participated, in obtaining this money by fraud, were crimes under British law, and such acts committed in Illinois are made offenses there. (Cahill, Illinois Revised Statutes of 1931, ch. 38, secs. 228, 230.) They are also made extradition crimes by treaty with Great Britain. (Treaty of December 13, 1900, Appendix p. xxv.) In other words, because of the peculiar facts of this case, the British Government, to convict Factor, would be required to prove (1) that he participated in the fraud by which the Broad Street Press, Ltd. obtained the money, and (2) that he received it from the Broad Street Press, Ltd. knowing that it was the money so obtained. Both these acts are crimes in England; both are offenses defined as extraditable in the treaties; one of them, the first, is made criminal in Illinois.

While it is not an essential part of the crime of receiving money knowing it to have been fraudulently obtained that the receiver should have participated in the original fraud, and it may not often happen that the guilty knowledge of the receiver is established by proving his participation in the fraud, the record in this case discloses such a situation. It seems clear that the British Government, in making the charge for the receiving, and not for the original fraud, has assumed a double burden. It must establish the receiving, with guilty knowledge of the source of the money, but in addition to that, *in order to establish that guilty knowledge, it must prove that Factor participated in the original fraud,* and establish his identity with a man known as Walker, Guest or Wise. If the technical and formal charge against him included two elements, one, receiving the property knowing it to have been fraudulently obtained, and the other participation in the original fraud, both being essential to conviction, there can be no question that he would be extraditable from Illinois, because conviction of the offense charged, in that case, would involve conviction of acts made criminal in Illinois. Although participation in the original fraud by which the money was obtained is not an essential element of the charge of

receiving, in this case, for all practical purposes, the situation is the same as if participation in the original fraud was a necessary element in the charge of receiving the property knowing it to have been fraudulently obtained. The whole case of the British Government is based on this theory. There is not a suggestion in the record that Factor had any guilty knowledge of the source of the Broad Street Press, Ltd. money, except on the theory that he was an officer of that company, participated in its projects, and was a party to them. It may be suggested that it is open to the British Government, after extradition, to shift its ground and prove guilty knowledge without showing that Factor participated in the original fraud and is the same person as Wise, Walker or Guest. No one can read the record and believe that any such shift is possible. Furthermore, an element of international good faith would be involved. If extradition is allowed on the assumption that the prosecution in England will follow the lines disclosed in this record, and not ask for Factor's conviction unless it establishes his identity with the man who participated in the frauds as an officer of the Broad Street Press, Ltd., there is no reason to expect that the British Government would proceed otherwise.

A statement in the extradition warrant to be issued by the Secretary of State, or in the opinion of this Court, that it is assumed the British Government will not attempt to establish guilty knowledge of the receiver by any other means than connecting him with the original fraud as a participant, would leave no reason to doubt that such course would be followed. The suggestion here made does not conflict in any way with the purpose or spirit of the policy generally followed in the drafting of extradition treaties. The general purpose of that principle is to prevent the extradition of any person, if the acts forming the subject of the charge against him are not treated as criminal by the laws of the place of asylum. That purpose is fully satisfied by the course we contend for in this case. The courts have paid little attention in these extradi-

tion cases to the descriptions of the crimes in one country or another, or to the technical differences between the criminal laws of one country and another. The ultimate question is merely whether the facts on which the charge is founded would constitute criminal misconduct at the place of asylum.

If it be necessary to the conviction of Factor on the charge against him that the British Government establish his guilt of the original fraud, itself a treaty crime, and a crime in Illinois, the result sought to be obtained by the requirement of criminality in both countries is arrived at.

III.

Before proceeding to the interpretation of the treaty provisions respecting the requirement of criminality in both countries, it is necessary to know which treaty is in effect.

At the time the proceeding was begun, the Treaty of 1889 was in operation. On August 9, 1932, the President proclaimed as in effect a new extradition treaty with Great Britain, signed December 22, 1931, known as the Dawes-Simon Treaty of 1932. At that period this case was pending in the United States Circuit Court of Appeals. Thereupon the petitioner made a motion in the Court of Appeals for a dismissal, on the ground that the Treaty of 1932 had taken effect and superseded the Treaty of 1889, and that the result was an abatement of the extradition proceeding. This motion was denied [R. 1288]. The court said it did not definitely appear whether or not the Dawes-Simon Treaty of 1932 was in effect in the United States, but assuming, though not deciding, that it was, held that it "embodies and carried forward all the provisions of the other treaties wherein the extradition proceedings herein were commenced and carried on", and it held that the pending extradition proceedings were not vacated or

terminated if the new treaty went into effect. At the former argument the petitioner contended that the 1932 Treaty was in effect in the United States, and the respondent contended that it probably was not.

A re-examination of this question leaves us far from sure that the 1932 Treaty is not now in operation in the United States, or, to state the question otherwise, we are far from sure that this Court may go behind the proclamation of the President of the United States to ascertain whether the treaty is in operation here.

The general rule is that treaties take effect as international compacts when ratifications are exchanged, (*Davis* v. *Parish of Concordia*, 9 How. 280; *Haver* v. *Yaker*, 9 Wall. 32.) Because of the provision in our Constitution making treaties, as well as statutes, the law of the land, a treaty becomes the law of the land here upon the exchange of ratifications, unless there is something in the treaty itself which requires legislation by Congress to execute it, or unless the treaty itself provides that it shall not then go into effect. In Great Britain the situation is otherwise. A treaty, when ratifications are exchanged, becomes there only an international compact or agreement. It does not become a law of the land until made so by Parliament. (1 New Sessions Cases 33.) The Extradition Act of 1870 contains the following provisions on this subject:

> "2. Where an arrangement has been made with any foreign state with respect to the surrender to such state of any fugitive criminals, her majesty may, by order in council, direct that this act shall apply in the case of such foreign state.
>
> Her majesty may, by the same or any subsequent order, limit the operation of the order, and restrict the same to fugitive criminals who are in or suspected of being in the part of her majesty's dominions specified in the order, and render the operation thereof subject to such conditions, exceptions and qualifications as may be deemed expedient.
>
> Every such order shall recite or embody the terms of the arrangement, and shall not remain in force for any longer period than the arrangement.

Every such order shall be laid before both houses of parliament within six weeks after it is made, or, if parliament be not then sitting, within six weeks after the then next meeting of parliament, and shall also be published in the London gazette.

* * * * *

"4. An order in council for applying this act in the case of any foreign state shall not be made unless the arrangement—

(1) Provides for the determination of it by either party to it after the expiration of a notice not exceeding one year; and,

(2) Is in conformity with the provisions of this act, and in particular with the restrictions on the surrender of fugitive criminals contained in this act.

"5. When an order applying this act in the case of any foreign state has been published in the London gazette this act (after the date specified in the order, or if no date is specified, after the date of the publication) shall, so long as the order remains in force, but subject to the limitations, restrictions, conditions, exceptions, and qualifications, if any, contained in the order, apply in the case of such foreign state. An order in council shall be conclusive evidence that the arrangement therein referred to complies with the requisitions of this act, and that this act applies in the case of the foreign state mentioned in the order, and the validity of such order shall not be questioned in any legal proceedings whatever."

Under this statute, in order that an extradition treaty may become operative, it is necessary that an Order in Council be made, and that it also be published in the London Gazette. Until Order in Council and publication have occurred, the treaty, although ratified, with ratifications exchanged, is not executed in Great Britain. On the other hand, in the United States we have a standing extradition statute which automatically puts in execution, so far as legislation is necessary, any extradition treaty. (U. S. C. A. Title 18, secs. 651-659.) If this Court is to go behind the Presidential proclamation, there are letters in the record

stating that the Order in Council has not yet been made and that the treaty of 1932 has not yet been published in the London Gazette.

Laying aside for the moment the first paragraph of Article 18 of the Treaty of 1932, the situation would be that this treaty had become operative as an international compact or agreement as the result of mutual ratifications and their exchange; that it had been placed in execution in this country through the standing Federal statutes relating to extradition; that, on the other hand, it had not been placed in execution in the territory of the other high contracting party. The situation seems to depend on the proper interpretation of that sentence of Article 18, which reads as follows:

> "The present Treaty shall come into force ten days after its publication, in conformity with the forms prescribed by the laws of the High Contracting Parties."

One interpretation of this provision is that the treaty shall not come into force in either country until it is published in both. The other interpretation is that it shall come into effect in each country ten days after its publication in that country, in accordance with the forms prescribed by its law. There is much to be said in favor of the latter interpretation. The President of the United States, in a proclamation attested by the Secretary of State, proclaimed this treaty. After reciting that ratifications had been exchanged, he said:

> "Now, Therefore, be it known that I, Herbert Hoover, President of the United States of America, have caused the said treaty to be made public, to the end that the same and every article and clause thereof may be observed and fulfilled with good faith by the United States of America and the citizens thereof."

Certainly this proclamation proceeded on the theory that the treaty was operative in the United States. The

record shows that ratification was advised by the Senate February 19, 1932; that it was ratified by the President of the United States March 3, 1932; that it was ratified by Great Britain July 29, 1932; that the ratifications were exchanged at London August 4, 1932, and the proclamation of the President was issued August 9, 1932.

The difficulties of the theory that the treaty was not intended to be effective in either country unless and until published in both are several. If an Order in Council in England was necessary to make this treaty effective in the United States, the proclamation of the President of August 9, 1932, was misleading and ineffective. Whichever country would proclaim it first under such circumstances, would be issuing a false and misleading proclamation. Another objection to construing Article 18 as requiring publication in both countries before the treaty is effective in either, is that it requires the courts of each country to receive evidence of a fact as to what has been done by the other high contracting party. In the present case it would require this Court to go back of the formal proclamation of the President. That proclamation is certainly an executive interpretation of Article 18, as it proceeds on the theory that the treaty is effective here. There are still greater difficulties in the way of the British courts going behind their Orders in Council. Section 5 of their Extradition Act of 1870, after providing for the Order in Council and the publication in the London Gazette, states:

> "An order in council shall be conclusive evidence that the arrangement therein referred to complies with the requisitions of this act, and that this act applies in the case of the foreign state mentioned in the order, and the validity of such order shall not be questioned in any legal proceedings whatever."

This forbids a British court to go behind the Order in Council and find out whether the treaty has been published in the United States, so that if an Order in Council and publication in the Gazette had been made in England before there was a proclamation and publication here, the English

courts would have been bound to regard the treaty as operative there without regard to what had been done here.

The Treaty of 1889 had a like provision, that "it shall come into force ten days after its publication in conformity with the forms prescribed by the laws of the High Contracting Parties". The high contracting parties evidently concluded that unless they made their publications simultaneously, the treaty would be executed in one country before it was in the other, and they made definite diplomatic arrangements to make the publication simultaneously to avoid this situation. (See, pages 545 to 548 of the appendix to brief of petitioner on reargument.) It will be noted that in a letter from Pauncefote to Secretary of State Blaine, he stated that the treaty "will be published tomorrow, the 25th instant, in the London 'Gazette' and that in accordance with the Provisions of Article 9, it will come into force throughout Her Majesty's Dominions ten days afterwards, that is to say on the fourth of April next." That is a direct statement that the publication in London is all that was necessary to make the treaty operative there. The letter does not say that it will not be in force throughout Her Majesty's dominions unless it is also published in the United States. The letter to Sir Julian Pauncefote from Secretary Blaine, dated March 26th is along the same lines.

There is some semi-official correspondence in the record expressing informally the views that the Treaty of 1932 is not operative in either country until it is operative in both. The considerations above set forth throw doubt on that view. The treaty undoubtedly became an effective international compact when it was ratified and the ratifications were exchanged. Delay of one party to take the necessary steps to execute it within its own territory, and promptness by the other party in executing the treaty, might well result in the treaty being executed in one country before it was executed in the other. The country which delays unreasonably in executing it may be in default of its international obligations, but that would not prevent

the treaty from being effective in the other. Such a situation was presented in *Charlton* v. *Kelly*, 229 U. S. 447, involving the extradition treaty with Italy. That treaty provided for extradition of "persons". The Italian Government contended that the word "persons" did not include an Italian citizen whose extradition from Italy was sought by the United States for an offense committed here. This Court held to the contrary, and held that the word "persons" did include a citizen, and that American citizens whose extradition from the United States was sought by Italy were subject to extradition under the treaty. From that view of the treaty, the Italian Government was not enforcing it, but this Court said that was a matter for the Executive Department and until it denounced the treaty or took steps to abrogate it because of default by the other high contracting party, the courts of the United States would apply and enforce it here.

There seems to be no statute in the United States providing for proclamation of treaties. There are statutes recognizing the practice of issuing such proclamation by requiring the treaties to be printed after they are proclaimed. (1 Stat. 187; U. S. C. A. Title 5, sec. 165.) In this country the proclamation may be only formal evidence of the fact that the treaty has gone into effect, but any interpretation of this treaty which requires the courts here to go behind our Presidential proclamation or requires the British courts to go behind their Orders in Council when prohibited so to do by their statutes, is open to question.

It may not be of vital importance which treaty is in operation. The contention of the petitioner that the taking effect of the 1932 treaty, superseding the 1889 treaty, during the pendency of this proceeding, operated to abate it and require its dismissal is utterly groundless. Extradition treaties apply to crimes committed prior to their signature, unless otherwise provided. [*In re de Giacomo*, 12 Blatchf, 391; 1 Moore on Extradition §86] The treaty of 1932 does not exclude from its operation crimes committed before its signature (as did Article VIII of the Treaty of

1889), and it expressly operates to supersede the prior treaty when it becomes operative. The parties could not have intended to abate all pending extradition proceedings.

The cases cited by the petitioner do not support his contention. This is not a criminal prosecution where the statute on which the prosecution is based has been repealed pending the proceeding. If the law has changed while the case has been on appeal, the appellate court will deal with the case on the basis of the new law. (See *Abie State Bank* v. *Bryan*, 282 U. S. 765.) If the new treaty had imposed some additional conditions or restrictions, and the record made before the commissioner while the old treaty was in effect failed to show compliance with such conditions so as to entitle the demanding government to extradition under the new treaty, no doubt the case would have to be remanded for further proceedings to supply the defects, but in this case the record furnishes all that is necessary for extradition under the 1932 treaty, as much as it did under the 1889 treaty.

If the extradition proceeding were completed by the entry of the order by the United States Commissioner on June 12, 1932 [R., 30] committing Factor, it could be said that the treaty then in effect governed the case, but the extradition proceedings were not ended then. The commitment was "to abide the order of the Secretary of State". The issuance by the Secretary of the extradition warrant was needed. His power to issue that warrant depends on the treaty in effect when the warrant is issued and executed. (U. S. Code Annotated, Title 18, sec. 653.)

The 1889 treaty defined as an extraditable offense "receiving any money * * * knowing the same to have been embezzled, stolen or fraudulently obtained". Paragraph 18 of the new treaty is as follows:

> "18. Obtaining money, valuable security, or goods, by false pretenses; receiving any money, valuable security, or other property, knowing the same to have been stolen or unlawfully obtained."

It uses the words "unlawfully obtained" in place of "fraudulently obtained". It is a broader provision, not a narrower one. The attempt of the petitioner to apply the rule of *ejusdem generis* so as to confine the word "unlawfully" to such means as constitute stealing, should be rejected. The provision is in an extradition treaty, not a criminal statute, and should be liberally construed. The word "unlawfully" means any criminal means of obtaining the property of another, whether by fraud or otherwise.

IV.

Does the applicable treaty require that the offense of receiving property knowing it to have been fraudulently or unlawfully obtained be punishable criminally in the state where the fugitive is found?

It has been the policy of nations to grant extradition only in those types of cases where the criminal acts charged abroad are made criminal by the law of the place of asylum. This is not a rule of international law to be read into a treaty, but a practice in the light of which treaties are to be construed. It is quite competent for two nations to make a treaty which is so drawn as to require criminality in both countries, and likewise it is competent for them to draw a treaty not imposing that condition or imposing it in respect of some crimes and not of others. What the intent of the parties is and to what extent they have incorporated this requirement of mutual criminality in a treaty is to be ascertained from the treaty itself. It is quite obvious that this problem has been very loosely dealt with in many treaties and decisions. The order for reargument pointing to the discussion in 1844 by Secretary Calhoun starts one on the trail. To understand this subject it is necessary to go back and review the development of extradition treaties with Great Britain.

The first question arises in respect of that clause so frequently found in extradition treaties that extradition will only be granted on such evidence of criminality as according to the laws of the place where the fugitive shall be found would justify his apprehension and commitment for trial if the offense had been there committed. Is it the operation of that clause in treaties which imposes the requirement of criminality in both countries, or is that provision merely intended as a requirement of proof of probable cause of guilt to prevent extradition on trumped up or unfounded charges? Such a provision appeared in Article XXVII of the Jay Treaty of 1794, which provided for extradition of persons charged with murder or forgery. (Appendix p. xx). The provision was repeated in Article X of the Treaty of 1842, of which the 1889 Treaty was a supplement. Secretary Calhoun took the position in his document that the proviso about evidence of criminality sufficient to commit did not impose a condition that the extraditable offense defined in the treaty must be a crime by the laws of both countries, and that it was nothing more than a requirement of proof of probable cause. The diplomatic correspondence contained in the appendix to petitioner's brief on reargument contains discussion of the requirement that the acts charged must be criminal by the law of the place where the fugitive is found, and some of these diplomatic documents mention this proviso respecting proof of criminality sufficient to commit at the place of the asylum, as intended to prescribe the condition of criminality in both countries, but the fact remains, whatever has been said in the diplomatic correspondence, that no extradition treaty has been signed by Great Britain and the United States since 1844, which relied on the proviso requiring proof of criminality, as sufficient to impose the condition that an extradition crime, defined as such in the treaty, would not be the basis of extradition unless the offense charged also constituted a crime at the place of asylum. In paragraph 3 of the Treaty of 1889, defining as an ex-

traditable offense the receiving of money knowing it to have been fraudulently obtained, there is no qualification that it must be made criminal by the laws of both countries. In the very next paragraph relating to frauds of bailee, banker, agent, factor, etc., it is expressly provided that, to be extraditable, these offenses must be "made criminal by the laws of both countries". Paragraph 10, relating to slave treaties, requires that the crimes be offenses under the laws of both countries. The general provision covering, without specification, participation in any of the crimes mentioned in the convention, contained a proviso or condition that "such participation be punishable by the laws of both countries".

It is too clear for argument that if the parties to this treaty considered that criminality in both countries was sufficiently provided for by the proviso in Article X of the Treaty of 1842, which remained effective as part of the Treaty of 1889, to the effect that extradition shall only be granted "upon such evidence of criminality as according to the laws of the place where the fugitive or person so charged shall be found would justify his apprehension and commitment for trial if the crime or offense had been there committed", they would have felt it wholly unnecessary to place in the definitions or schedules of extraditable offenses the qualification that they must be made criminal by the laws of both countries. All such conditions found in certain paragraphs of the Treaty of 1889 were surplusage if the proviso about proof of criminality were sufficient in itself to bring the principle into operation. It is unfortunate that the diplomatic correspondence set forth in the appendix to petitioner's brief on reargument dwindles to little that is useful, as the date of signing the 1889 treaty was approached, and there is practically nothing in the way of diplomatic correspondence immediately prior to the signature of that treaty which throws any light on or deals with the reason for inserting in certain paragraphs of the 1889 treaty, and omitting in others, the condition that the offense stated be made criminal by the laws of both countries.

Immediately following the 1889 treaty came a supplementary treaty of December 13, 1900, which added to the list of extraditable crimes the following schedule:

> "11. Obtaining money, valuable securities or other property by false pretenses.
>
> 12. Wilful and unlawful destruction or obstruction of railroads which endanger human life.
>
> 13. Procuring abortion."

This convention provided that it should be considered an integral part of the prior extradition treaty.

It will be noted that these schedules of additional crimes omitted any express condition that they be criminal by the laws of both countries. Five years later came the supplementary treaty of April 12, 1905, which added two other crimes to the list of extraditable offenses, in the following terms:

> "14. Bribery, defined to be the offering, giving or receiving bribes made criminal by the laws of all countries.
>
> 15. Offenses, if made criminal by the laws of both countries, against bankruptcy laws."

Here we find the high contracting parties again refusing to rely on the general proviso about proof of criminality as sufficient to impose the requirement of criminality in both countries and they insert express provisions in connection with the definition of the extradition crimes. The diplomatic correspondence relating to these treaties does show that the qualifications contained in the Treaty of 1905 respecting bribery and offenses against the bankruptcy law that they be made criminal by the laws of both countries, were inserted at the request of the British Government. (Appendix to brief of petitioner on reargument, pp. 556, 557, 559, 560, 564, 566.) The diplomatic correspondence there refers to the case of Whitaker Wright (*Wright* v. *Henkel*, 190 U. S. 40). The significant thing about this

reference is that the case of *Wright* v. *Henkel* arose under paragraph 4 of the Extradition Convention of 1889, which read as follows:

> "4. Fraud by bailee, banker, agent, factor, trustee, or director or member or officer of any company made criminal by the laws of both countries."

The court was there considering a crime defined in a paragraph which contained the condition that it be made criminal by the laws of both countries, and in making the Treaty of 1905 the high contracting parties evidently proceeded on the theory that in order to make such a condition of mutual criminality effective, the definition of the crime should have such a provision attached, and the general provision about proof of criminality would be insufficient. Whatever may be said about the slavery question and the feeling with which Secretary Calhoun may have been affected in 1844, the fact remains that no extradition treaty between Great Britain and the United States since that date has ever been drawn on the theory that the "proof of criminality" proviso was sufficient to impose the condition that the acts charged must be criminal in both countries.

The Treaty of 1932 proceeds along the same line. In the schedule of extradition crimes it omits some conditions found in the 1889 and 1905 treaties respecting criminality in both countries. It imposes, however, such a condition in paragraph 6 of Article 3 respecting assault, and expressly imposes the provision in the blanket provision dealing with undefined offenses constituting participation. It makes some changes in the general provisions respecting proof of criminality. Article 9 is as follows:

> "'The extradition shall take place only if the evidence be found sufficient, according to the laws of the High Contracting Party applied to, either to justify the committal of the prisoner for trial, in case the crime or offence had been committed in the

> territory of such High Contracting Party, or to prove that the prisoner is the identical person convicted by the courts of the High Contracting Party who makes the requisition, and that the crime or offence of which he has been convicted is one in respect of which extradition could, at the time of such conviction, have been granted by the High Contracting Party applied to."

It eliminates the expression "laws of the place where found" and requires proof of probable cause sufficient "according to the laws of the High Contracting Party applied to". The clause relating to extradition of escaped convicts supports the argument that this article deals only with proof of probable guilt, and has no other purpose.

According to the ordinary canons of construction, applied to the Treaty of 1889, the conclusion would be that the insertion of the condition about criminality in both countries with respect to some extradition crimes and its omission in other paragraphs, had a purpose and that it was not intended to impose such a condition where it was omitted; furthermore, that the insertion of such a condition in various portions of the list of extradition crimes is inconsistent with the idea that the general proviso about proof of criminality imposed such a condition in all cases or was anything more than a requirement of proof of probable cause. However, we are confronted on the other hand with a mass of diplomatic exchanges which evidently make much of the general principle or policy of nations not to grant extradition where the acts charged are not criminal according to their own laws.

There are three possible views of the situation. One is that presented by the petitioner, who brushes aside all analyses of the provisions of the treaties and says that these conditions inserted here and there in these extradition treaties about criminality in both countries were put in out of an "abundance of caution", and that the proof of criminality proviso, taken by itself, is enough in all cases to impose the

requirement of mutual criminality. Another suggestion is that the United States, at least, after looking over the proposed list of extradition crimes, satisfied itself in advance of signing the treaty, that the acts described were of the type ordinarily made criminal in this country, and even though there might be a state here and there which did not make them so, our Government should be willing to treat the offenses listed as coming within the rule of policy mentioned, except where an express proviso was inserted that the acts must be made criminal under the laws of both countries. Many states have criminal statutes punishing the offense of receiving property knowing it to have been obtained by fraud or false pretenses. (Appendix p. xxxviii). From that point of view our Government would be reducing the practical difficulties arising from the existence of forty-nine different jurisdictions in the United States, each of which represents a choice of asylum. The third point of view is that suggested by Solicitor-General Hoyt in his argument in *Wright* v. *Henkel* (see, 190 U. S. p. 56). He said:

> "No phrase was needed in the treaty of 1889 to explain the crimes of murder, burglary, etc., nor to express the necessity of criminality in both countries. They *are* criminal in both countries without that. The difference as to clause 4 of the treaty of 1889 with England respecting fraud by bailee is that as to that class of offences, not yet completely established as criminal, the two powers decline to engage respecting species still carrying a mere civil liability, and therefore the phrase 'made *criminal* by the laws of both countries' was used. Provided the particular variety is *criminal* in both jurisdictions, exact correspondence is not necessary. The essence and substance are to be regarded, and highly technical considerations fall away."

On this view of the case, the omission of the requirement of criminality in both countries in paragraph 3 of Article I of the Treaty of 1889 relating to receiving money knowing it to have been fraudulently obtained, means that the high

contracting parties were satisfied that all the offenses there were criminal in both countries, and there was no need to place any special condition to that effect in that paragraph. If that principle be applied here and we follow the practice of looking at the law in force in the state where the accused is found, and conclude that there is no statute in Illinois punishing the receiving of fraudulently obtained property, we find that the high contracting parties made a mistake in assuming that the receiving of property knowing it to have been fraudulently obtained was criminal in every state of the Union. We would then have a case where the parties to the treaty omitted a requirement of criminality in both countries with respect to these particular offenses on a mistaken assumption. If that be so, the treaty would nevertheless have to be enforced as it reads.

This is not an action to reform a treaty and the Court has no power to grant such relief in a treaty case. If there has been a mistake or error, it is a simple matter for the high contracting parties to correct through executive action. It should be noted, however, in this connection that the British Government has always adhered very strictly to the view that the act charged abroad must be made criminal by the laws of Great Britain before it will grant extradition. They have protection along those lines through the operation of their Extradition Act, which defines the crimes which may be made extraditable by treaty, and they have been careful to limit their list to acts which are made criminal by their own laws, and any treaty which goes beyond the list of extraditable offenses in the Extradition Act has to receive the approval of Parliament in the form of amendments to the Extradition Act before it can be made operative by an Order in Council. While we have no authentic information on the subject, it is possible that the failure of the British Government to issue an Order in Council in the case of the 1932 treaty may be due to a question whether the new treaty goes beyond their Extradition Act, making necessary the passage of an Act of Parliament before it can be made operative.

Cases in this Court bearing on these questions are the following:

Benson v. *McMahon,* 127 U. S. 457;
Wright v. *Henkel,* 190 U. S. 40;
Pettit v. *Walshe,* 194 U. S. 205;
Kelly v. *Griffin,* 241 U. S. 6;
Collins v. *Loisel,* 259 U. S. 309.

In *Benson* v. *McMahon,* arising under an extradition treaty with Mexico, the court dealt with the purpose and effect of a provision in that treaty requiring proof before a magistrate of the fact of the commission of the crime charged sufficient to justify commitment for trial. The court dealt with this provision as a requirement of proof of probable cause.

Next comes the case of *Wright* v. *Henkel,* the leading case on this subject, and upon which all later decisions are based. That case arose under the extradition treaty with Great Britain of 1889. The charge against Wright was that of fraud as director of a company, and the charge was based on the schedule of extraditable offenses found in paragraph 4 of Article 1 of the treaty, reading as follows:

> "4. Fraud by a bailee, banker, agent, factor, trustee, or director or member, or officer of any company, *made criminal by the laws of both countries.*" [Italics ours.]

In its opinion the court said:

> "The general principle of international law is that in all cases of extradition the act done, on account of which extradition is demanded, must be considered a crime by both parties, and as to the offense charged in this case, the treaty of 1889 embodies that principle in terms. The offense must be 'made criminal by the laws of both countries'."

It is obvious that the court was right in holding in that case that the act charged must be made criminal by the laws

of both countries before extradition could be granted. The phrase it refers to as bringing about that result or embodying that principle in the treaty, is not the proviso in Article X of the Treaty of 1842 providing for evidence of criminality sufficient to justify commitment for trial, but the qualifying phrase in paragraph 4 of Article I naming the offense as an extradition crime. In the later decisions on this subject attention does not seem to have been called to the scope of the decision in *Wright* v. *Henkel*, or to the fact that in that case the court was dealing with one paragraph which expressly imposed the condition of criminality in both countries. If any criticism is to be offered of the above quoted statement in the opinion in *Wright* v. *Henkel*, it is in the reference to a "general principle of international law". If by this it was meant that whatever a treaty might say, the condition about criminality in both countries must be read into it as a rule of law, the statement went too far. If it meant that it was the general policy of nations in making treaties of extradition to so draft them as to impose such a condition, the statement was accurate. Clearly it is competent for the high contracting parties, in selecting the list of extradition crimes to decide for themselves in advance whether the crimes included in the list are of such nature as to satisfy the purpose and spirit of this international policy, and having so decided, it becomes unnecessary for them to qualify the list of extradition crimes by any such condition. Indeed, it seems futile to incorporate in a treaty a long list of offenses of extradition crimes, some of which may not be offenses in both countries, and then nullify the list in part by such a condition. The modern practice seems to be to make up a list which each party believes sufficiently satisfies the policy about mutual criminality and place such list in the treaty without a qualifying condition about mutual criminality. That is especially true of the Treaty of 1932, where the parties decided in advance what crimes satisfied their policy about mutual criminality, and only in one or two paragraphs where questions arose did they insert special conditions on that subject.

Pettit v. *Walshe* arose under the treaty with Great Britain and dealt with the question as to where the hearing of the proof of criminality should be had. Attempt there had been made to have a hearing before a commissioner in a district other than that in which the fugitive had been found, and the court held that the production of evidence of criminality under the terms of the treaty should be made before magistrates in the place where the fugitive was found.

Then came *Kelly* v. *Griffin*, arising under the same paragraph of the 1889 treaty we are now considering, the charge being receiving property knowing it to have been fraudulently obtained. In that particular paragraph of the treaty there is no condition that the act must be "criminal by the laws of both countries". The court there accepted without question the assumption that in all cases the act charged must be one criminal at the place of asylum. The fact that the *Wright* case arose under a section of the treaty specially containing the condition and that the *Kelly* case arose under a paragraph not containing it, was not referred to, and may have been overlooked. The court, assuming that criminality in both countries was a necessary condition, held that the receiving of property knowing it to have been fraudulently obtained, was a crime in Illinois as well as in Canada.

Collins v. *Loisel* is the same type of case, which arose under the Treaty of 1889 with Great Britain as supplemented by the Treaty of December 13, 1900. The charge was obtaining money by false pretenses. That treaty added to the schedule of extradition crimes the following:

> "11. Obtaining money, valuable securities or other property by false pretenses."

This item did not contain the express condition that the act must be criminal by the laws of both countries, as did paragraph 4 of the schedule and other parts of it. Attention does not seem to have been directed to the presence of such a condition in some items of the schedule and of its absence in others, nor was mention made of the fact that the

case of *Wright* v. *Henkel,* on which principal reliance was placed, had dealt with a paragraph containing that express condition. The court, accepting the general statement that the act charged must be a crime in both countries, proceeded to hold that that condition was satisfied.

In no case decided by this Court has extradition been refused because the act was not made criminal in the state where the fugitive was found.

CONCLUSION.

The conclusion should be that the record in this case shows fulfillment of all the prerequisites to extradition and the judgment of the Court below should be affirmed.

Respectfully submitted,

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APPENDIX TO BRIEF OF RESPONDENT ON REARGUMENT.

Doc. No. 114.

28th CONGRESS, *2d Session* — HO. OF REPS. *Executive.*

FUGITIVE CRIMINALS FROM FLORIDA.

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES,

TRANSMITTING

Report from the Secretary of State, and copies of documents relative to fugitive criminals from Florida.

FEBRUARY 12, 1845.

Read, and referred to the Committee on Foreign Affairs.

To the House of Representatives of the United States:

I herewith transmit to the House of Representatives, in answer to its resolution of the 31st ultimo, a report from the Secretary of State, together with the copies of documents therein referred to.

JOHN TYLER.

WASHINGTON, *February* 5, 1845.

DEPARTMENT OF STATE,
Washington, February 5, 1845.

The Secretary of State, to whom has been referred the resolution of the House of Representatives of the 31st ultimo, requesting the President to communicate to that body, if not incompatible with the public interests, "any further communications which may have passed between the government of Great Britain and our own, respecting the surrender of fugitive criminals from Florida, under the

treaty of Washington, not heretofore furnished to that House," has the honor to submit to the President the accompanying copies of papers.

J. C. CALHOUN.

The PRESIDENT OF THE UNITED STATES.

DEPARTMENT OF STATE,
Washington, August 7, 1844.

[No. 99.]

SIR: Some time in September last, a gang of seven negroes in East Florida robbed the son and daughter of a citizen of the Territory, of the name of Green, and plundered his house in his absence, and, after murdering him, while in pursuit of them, escaped to Nassau, in New Providence. The grand jury of the judicial district, after full investigation, returned bills of indictments against each of them for robbery and murder. Requisition was made in due form by the Secretary of State, through the British minister at Washington, and transmitted to the marshal of that portion of the Territory, who was authorized to receive the criminals. He repaired to Nassau; and, on application, the governor of the Bahamas issued his requisition to the chief justice of the colony, who, acting with the associate judges, in open court refused to deliver up to justice the fugitives, on the ground that the evidence offered was not such as was required by the act of Parliament for giving up criminals, fugitives from justice, in certain cases. The court remarked, in delivering its opinion, that "an indictment *per se* can never be received as evidence. It is not enough for us to know that the American jury thought the parties guilty. We ought to know the *grounds* upon which they thought them guilty. What may constitute the crime of murder in Florida, may be very far from doing so according to the British laws, or even the laws of the northern States of America. By issuing a warrant, then, to apprehend the parties in virtue of these indictments, we might be doing so on

evidence which would not justify their apprehension by the British laws, and should thereby be proceeding in direct violation of the act."

The President, in compliance with calls from the two houses, transmitted to Congress all the correspondence and documents connected with the case, of which a copy is enclosed, with a copy of the speech of Mr. Levy, the Delegate from the Territory, on a motion to refer the message and documents to the Committee on Foreign Affairs, to which I would refer you for more full information. The message, with the documents, was referred to the committee. No report was made, but it is understood one will be at the next session.

You will see, by reference to the documents, that the crimes committed by the fugitives were wanton and atrocious. The affair connected with the refusal to deliver the fugitives up, has caused much feeling and excitement, especially in that portion of the Union. The remarks of the court leave little doubt that it is its opinion that the case does not come within the 10th article of the treaty, on the ground that the crimes charged (of murder and robbery) being committed by slaves escaping from the authority of their masters, do not constitute murder and robbery according to the laws of Great Britain. No other meaning can be attached to the remarks which accompanied the objection taken against receiving the authenticated copies of the bills of indictment found by the grand jury, which were offered in evidence.

It is now very desirable to know, before any further step is taken, whether the government of Great Britain intends to support the ground taken by the court, as clearly intimated in its remarks. If so, it would be idle to discuss the question whether the authenticated copies of the bills of indictments found by the grand jury were sufficient evidence of the crimes charged, to justify the commitment of the fugitives under the provisions of the 10th article, or to take any further step to have them surrendered, in this or any

other case of fugitive slaves, be their crime what it may, or under whatever circumstances committed. There can be none stronger than this, whether regarded in reference to the atrocity of the crimes, or the circumstances under which they were committed. When it is ascertained whether the government of Great Britain intends to support the ground indicated by the court, or not, we, on our part, will be prepared to decide what course it will be proper for us to adopt.

According to that ground, the acts charged as murder and robbery must be such as to constitute those crimes not only according to the laws of Florida, but also to constitute them such by the laws of Great Britain—or rather, in this case, of the Bahama islands. After a careful examination of the subject, I cannot regard it as tenable; on the contrary, I hold it to be clearly inconsistent with the provisions of the article, and the plainest dictates of reason. The body of the article is in the following words:

"It is agreed that the United States and her Britannic Majesty shall, upon mutual requisitions by them or their ministers, officers, or authorities, respectively made, deliver up to justice all persons who, being charged with the crime of murder, or assault with intent to commit murder, or piracy, or arson, or robbery, or forgery, or the utterance of forged papers, committed within the jurisdiction of either, shall seek an asylum, or shall be found within the territories of the other."

Such is the body of the agreement. Nothing can be more clear. The persons to be delivered up to justice, the crimes charged for which they are to be delivered up, within whose jurisdiction they must be committed, and within whose territories the fugitives shall be found, are all so clearly specified as to preclude the possibility of doubt. It comprehends *all persons charged* with the crimes of murder, robbery, &c., *committed within the jurisdiction* of the party making the requisition, and *found in the territory* of that on whom the requisition is made. That these words are broad enough to comprehend the case under consideration, is beyond doubt;

and, of course, the only possible question which can be made is, whether it is not taken out by the proviso which immediately follows. The material portion, and that on which the construction of the residue depends, is in the following words: "Provided that this" (the delivery up to justice) "shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his apprehension and commitment for trial, if the crime or offense had there been committed." It is too plain to require proof that it relates to the evidence on which the fugitive is to be given up to justice, exclusively, without intending to restrict or change the body of the agreement. That having clearly specified who were to be delivered up to justice on the requisition of either party, it became necessary, in order to give effect to the agreement, to specify on what evidence it should be done; and to do that, accordingly, is the sole object of the proviso. It specifies that it shall be done on such evidence of criminality as would justify his apprehension and commitment for trial by the laws of the place where the fugitive is found, had the crime *charged* been there committed; that is, if the crime *charged* be murder or robbery, (as in this case,) on such evidence as would justify apprehension and commitment for trial for murder or robbery at the place.

Taking the body of the agreement and the proviso together, it would seem to be unquestionable that the true intent of the article is, that the *criminality* of the act charged should be judged of by the laws of the country within whose jurisdiction the act was perpetrated; but that *the evidence* on which the fugitive should be delivered up to justice should be by the laws of the place where he shall be found. Both are to be judged by the laws of the place where they occur; and properly so, as they are paramount within their respective limits. And hence it is expressly specified in the body of the agreement, that the crime charged must have been committed within the jurisdiction of the party making

the requisition; and in the proviso, that the evidence on which the fugitive shall be delivered up, shall be such as is required to apprehend and commit for trial according to the laws of the place where he is found. That this is the true construction, is confirmed by the fact that it reconciles the proviso with the body of the agreement; while the opposite (which would judge of the criminality of the act, not by the laws of the place within whose jurisdiction it was committed, but by those of the place where the fugitive was found,) would not only essentially change what is clearly specified in the body of the agreement, but make it absurd. If such had been the intention of the parties, instead of reading as it does, it ought to have read as follows: It is agreed that the United States and her Britannic Majesty shall, upon mutual requisitions by them or their ministers, &c., &c., respectively made, deliver up to justice all persons who, being guilty of (not charged with) the crimes of murder, &c., &c., &c., according to the laws of the place where the fugitive is found, (not committed within the jurisdiction of the party making the requisition,) shall seek an asylum, or shall be found in the territories of the other. Such an agreement would have been manifestly absurd; and yet, as absurd as it would be, it must be so worded to make it agree with that construction of the proviso which would judge of the criminality of the act by the laws of the place where the fugitive was found, and not by that where the act was committed. If it be against a fundamental rule of construction, to give such a construction to one part of an agreement as to make it inconsistent with another, when it is possible to avoid it; what shall be said of a construction which shall give to a proviso such a construction as would render the body of the agreement absurd, when another would reconcile the two, and give effect to every word of both? If there should be an irreconcilable difference between them, the subordinate should surely yield to the principal—the proviso to the body of the agreement.

But such a construction of the proviso would not only be irreconcilable with the body of the agreement, but would, as

I have stated, be inconsistent with the plainest dictates of reason. No act committed in one country, however criminal according to its laws, is criminal according to the laws of the other. Crimes, in a legal sense, are local; and are only so, because the acts constituting them are declared to be so by the laws of the country where they are perpetrated. Great Britain cannot, by her laws, make an act committed within the jurisdiction of the United States criminal within her territories, however immoral of itself; and *vice versa*. The proposition is too clear to require illustration, or to be contested; but if that be admitted, it must also be admitted that the criminality referred to in the proviso is to be judged of by the laws of the place within whose jurisdiction the act was charged to have been perpetrated, and not where the fugitive is found.

Against this, but one position can be taken in defence of the ground indicated by the court of the Bahama islands; and that is, to admit our construction of the proviso to be correct, but maintain that, while the criminality of the act must be judged of by the laws of the place where it was charged to have been committed, it must at the same time be such as would constitute the crime charged by the laws of the place where the fugitive was found. To this, two answers may be given; either of which is conclusive. In the first place, it may be replied, that it is a pure assumption, unwarranted by anything whatever, either in the proviso or the entire article. It is not only not expressed, but is not necessary to give to any word in the article its full and proper meaning, or to reconcile any apparent conflict among its provisions. And, in the next, that it would be impossible to give such a construction to the proviso, without greatly restricting the plain meaning of the body of the agreement. Instead of subjecting *all* persons to be delivered up to justice, who are charged with the crimes of murder, &c., &c., &c., committed within the jurisdiction of the party making the requisition, and found in the territories of the other, it would subject *only those* to be delivered up who were charged with acts constituting the crimes of murder, &c.,

&c., &c., by the laws of *both* countries—in direct contradiction to the express provisions of the body of the agreement, and against the plain intent of the proviso, as has been shown, and the fundamental rule of construction, which requires that the different parts of an agreement should be so construed, if possible, as to reconcile all, and give effect to each.

I might go further, and show that the position is against the plain and literal meaning of the proviso itself; but I deem it unnecessary to add to the force of the reply already advanced against it. Indeed, it might be shown that, if admitted, it would not sustain the ground indicated by the court. In order to do that, it would be necessary to assume that, according to the laws of Great Britain, a slave is justified in killing and robbing, if it be necessary to effect his escape and secure his liberty. Without pretending to be conversant with her laws, I feel assured I hazard nothing in asserting that there is no such law either in Great Britain or the Bahama islands, or any other of her numerous colonial possessions. No doubt there are laws in all which justify homicide, if committed in resistance to unlawful restraint; but none that do, where the restraint is lawful. That is the broad and fundamental distinction in the penal code of all countries, between justifiable homicide and murder, where death ensues in consequence of resistance to restraint. By it this case must be tested, if the ground indicated by the court of the Bahama islands be admitted; and not by the incidental circumstance, whether this or that restraint be lawful or not, but by the laws of both countries. Each has the right to determine for itself what restraints its welfare and safety may require to be imposed on the acts of the individuals of which it is composed; and that must be determined in reference to circumstances that are almost infinitely varied, not only in relation to the two countries as a whole, but also to the various States, Territories, colonies, and dependencies, of which they are composed. They are, in consequence, greatly diversified, and would be found, on

examination, very different in reference to most of the crimes enumerated by the 10th article of the treaty; and which would lead to great confusion and uncertainty, if any other rule of judging of criminality be admitted, but the broad and fundamental one above stated. Tested by that, this case would be embraced by the article, even according to the restricted standard indicated by the Bahama judges. There is no doubt that the restraint from which these fugitives were escaping, when the acts charged were perpetrated, was imposed by the laws of Florida; and, of course, was a lawful restraint, and the homicide committed by them murder. And so, there is little doubt, it would have been declared, even by the Bahama court, in any other case of restraint made lawful by the acts of Florida, except the one in question. This brings up two very grave questions. On what principle can such a distinction be made? and is the government of Great Britain prepared to make it? I can imagine but one; and that is, that the form of restraint implied under the name of domestic servitude—that is, of one man holding another under subjection, and commanding his labor without his consent—is so repugnant to the moral code, that it cannot be made lawful, although sanctioned by laws of the country where it exists. But it cannot be that Great Britain, who is more responsible than any other country for the extent of that form of servitude on this continent, and which has but so recently abolished it, with so little benefit to herself or those liberated in her own possessions, is prepared to adopt and act on such a principle, and thereby place, as far as its operation may extend, this country, Russia, Spain, Brazil, and all others not prepared to follow her example, in a state of national outlawry in reference to herself, against the authority of all ages, and of the great expounders of international laws, and, it may be added, of the Bible itself, which, as often as it is mentioned, nowhere discourages such servitude, or pronounces it to be repugnant to morals or religion. It cannot be that she is prepared to adopt a principle, which, if carried out in prac-

tice, would not only be subversive of the right of one man holding in subjection and commanding the labor of another without his consent; but equally so of one people or nation holding another, or one portion of one people or nation holding the other in subjection, and commanding their labor without its consent. It cannot be but she must see that the principle tends to the subversion of all human authority, and that it contains within itself the germ of universal anarchy; and must, if carried out in practice, react with destructive fury on her political institutions, and burst the bonds which hold in servitude, under her subjection, so large a portion of the human race.

But, be that as it may, it is at least certain that she cannot but know that the treaty never would have been ratified, had we believed that she would adopt the principle, or so construe the 10th article, as to exclude from its operation fugitive slaves charged with the crime of murder, robbery, or any other of those enumerated, who might seek an asylum or be found in her territories. Certain it is, that no Senator from the slave holding States would have knowingly voted for a treaty embracing a principle which would stamp such a stigma on their constituents and institutions, and exclude them from almost all the advantages they could hope to derive from it. It might be added, nor any Senator vote for it, who regarded the honor of his country, or the sacred obligations of the constitution, which makes it the duty of the federal government to extend equal protection to all the members of the Union. The subject, indeed, was not passed over without notice while the treaty was before the Senate. During the discussion, it was objected to the article, that it was so worded, intentionally, as to exclude from its operation cases of this description. It was replied, that the portion of the article objected to was copied *verbatim* from Jay's treaty of 1794, made long before England had contemplated the abolition of slavery in her possessions, and when there could be no intention of the kind. It was added, that treaty had never received an interpretation

that would warrant such a construction. The reply quieted all apprehension, and the treaty received the vote of a large majority of the slave-holding States. Without them, it would not have been ratified.

Such we believe to be the true construction of the 10th article of the treaty, in reference to this most important point; and such was the expectation under which the treaty was ratified. It is full time that we should know what construction the government of Great Britain intends to adopt in relation to it, and whether our just expectation is to be realized or not. You are, accordingly, hereby instructed by the President to bring the subject, without any unnecessary delay, to its attention, in strong but respectful terms; and to urge it to come to an early decision. Be that what it may, it is very desirable that we should know it before the meeting of Congress at its next session, when the subject will, doubtless, claim the attention of both houses.

I am, sir, very respectfully, your obedient servant,

J. C. CALHOUN.

EDWARD EVERETT, esq., *&c., &c., &c.*

[No. 216.]

LONDON, *November* 23, 1844.

SIR: The receipt of your despatch (No. 99) of the 7th of August, relative to the refusal of the authorities at Nassau to surrender the slaves charged with the murder of Mr. Green, of Florida, and demanded as fugitives, has been already acknowledged. Believing that a personal conference with Lord Aberdeen afforded the means of learning with the least delay the ground intended to be taken by this government in reference to the questions raised on occasion of that refusal, and discussed in your despatch, I availed myself of the earliest opportunity for the appointment of an interview for that purpose. After some delays, not easily

avoided at this season of the year, it took place on the 20th instant, at Argyle House.

I introduced the subject with a general statement of the facts of the case, as set forth in your instructions just mentioned. I called Lord Aberdeen's attention to the argument by which the judges at Nassau defended the supposed requirements of the statute of 6 and 7 Victoria, ch. 76; and to the inference naturally to be drawn from their language. I observed to him that I had been led, by various considerations, to doubt whether the court, on this occasion, had rightly interpreted the views of her Majesty's government. That if it were so, I was instructed strongly to contest them; but, that being desirous of ascertaining the principles adopted by her Majesty's government on this subject, without the delay incident to an elaborate discussion, I had thought it better to bring the question before him in this way, in the hope that he would be able to furnish me at once with a satisfactory explanation.

I then read to Lord Aberdeen that portion of your despatch (No. 99) in which the facts of the case are related, and the inference naturally to be drawn from the language of the court at Nassau is commented on.

As soon as I had done this, Lord Aberdeen observed that he found no difficulty in saying, that, of the extract from the opinion of the court at Nassau given in your despatch, the only portion which he adopted as the language of the government was the first part, in which it is stated that an indictment is not, of itself, (under the act of Parliament for carrying the treaty into effect,) sufficient ground for giving up a fugitive. But the same answer would have been given by her Majesty's authorities, had the persons demanded been free. The argument contained in the other part of the passage quoted in your instruction, was no doubt intended to enforce the view taken by the court of the expediency of the provisions of the statute; but the answer to the application was perfect without it; and he felt no hesitation in saying that the argument or illustration of the court was not adopted by him. Consequently,

as far as the government was concerned, no inference like that dwelt upon in your letter should be drawn from it.

I told him that the notorious fact that the technical crime of murder was the same in all parts of the United States and in England left little room for doubt, that when the court stated that "what may constitute the crime of murder in Florida, may be very far from doing so according to the British laws, or even the laws of the northern States of America," they must have alluded to the case of slaves, and have intended to say that evidence which would establish a charge of murder against a free man might not establish it against a slave.

Lord Aberdeen admitted that this was a fair inference, as far as the court was concerned; but repeated that it was merely language of argument or illustration, for which the government was not responsible.

He then remarked that he thought, as far as the present case was concerned, this must be considered a satisfactory reply to the inquiry contained in your despatch. The surrender of the fugitives was refused, because the application was not supported by the evidence required by the statute; and it would have been of necessity refused, for the same reason, had the application been made in any part of the United Kingdom, and had the fugitives been free white men.

He did not, however, mean to say, that in no case whatever, which might arise hereafter, would the result of an application for the surrender of a fugitive charged with murder depend in any degree upon the question whether he was a slave endeavoring to escape from his master. By the laws of all countries, the same act of killing did or did not constitute the crime of murder, according to the circumstances of the case, which were often matters of very nice discrimination; and he could very well conceive that, in cases which might arise, the fact of a person's being a slave might materially affect the question of his guilt on a charge of having committed murder. Her Majesty's government must reserve to itself the liberty of dealing with

cases of this kind when they present themselves, and of being governed by [circumstances,] which cannot be foreseen nor provided for in any general regulations. He was, however, free to say, that he did not share the opinion of those who hold that slaves, as such, cannot commit a crime. He regarded them as moral agents, and, of course, to be regarded in that light on a demand for extradition; leaving the consideration due to their condition, as such, to be decided by the circumstances of each individual case.

In reference to my observation that the legal crime of murder was the same under the laws of both countries, Lord Aberdeen said, that, in arranging the provisions of the extradition treaty with France, they had experienced some difficulty on that point. It was found that the words "murder" and "*meurtre,*" in the two languages, respectively, would not, without further qualification, technically describe the same crime; and it had been necessary to add the words of definition, "comprehending the crimes designated in the French penal code by the terms assassination, parricide, infanticide, and poisoning."

In the course of the interview, I stated to Lord Aberdeen that the government of the United States considered that an indictment, or a duly authenticated copy of one, was, by the treaty, a sufficient ground for demanding the extradition of fugitive criminals; and that the statute, in requiring the depositions, or copies of depositions, on which the indictment was founded, (if it did so require them, which was matter of some doubt,) went beyond the treaty; which neither party to that contract was competent to do. I added, that I made this remark not now by way of entering into discussion on that point, but to prevent an inference being drawn from my silence.

Such is the substance of our conference on this subject; from which, taken in connexion with what has fallen from Lord Aberdeen on occasions where it has been less formally alluded to, I am disposed to infer that the instructions given to the colonial authorities, in reference to slaves whose surrender is demanded as fugitive criminals, are of a very

general nature, and such as would require, in cases of any difficulty, a reference to the home government for its decision. That no instructions have been sent to refuse the surrender of slaves, as such, is, I think, clearly implied in the remark of Lord Aberdeen—that, in his view, they are to be regarded as moral agents, capable of committing crimes. His distinct disavowal of the argumentative statement by the court as to the grounds of the statute provision, which is supposed to require the production of the evidence laid before the grand jury who find the indictment, may be considered as proof that no instructions had been sent to the court authorizing such a statement.

As it appears, from the observations of Lord Aberdeen, that an indictment will in no case, of itself, be considered as a sufficient ground of surrender, I shall, as soon as possible, address a note to him on that subject.

I am, sir, with great respect, your obedient servant,

EDWARD EVERETT.

J. C. CALHOUN, esq.
Secretary of State.

[No. 120.]

DEPARTMENT OF STATE,
Washington, January 28, 1845.

SIR: The last steamer brought your despatch No. 216, giving an account of the conference between you and Lord Aberdeen, in reference to the subject of my despatch No. 99. I regret to say that the result is very unsatisfactory. The object of my despatch would seem to have been misunderstood. By recurrence to it, you will perceive that its leading object is to ascertain whether, according to the construction given by the British government to the 10th article of the treaty of Washington, the *act* charged as a crime must be such, in order to bring it within the pro-

visions of the article, as would constitute the crime charged by the laws of the place where the fugitive criminal is found, as well as of that where it was committed.

The ground taken by the Nassau authorities, in declining to surrender the slaves charged with murder and robbery in Florida, in the case to which my despatch refers, leaves no doubt that such is their opinion. It would be idle, after an avowal of such an opinion on their part, to take any further step in the case, until it is ascertained whether the home government will sustain the colonial in it, or not. To ascertain that, is the object of my former despatch. Your account of the conference with Lord Aberdeen gives us nothing satisfactory on this important point. He, indeed, disavows the opinion of the Nassau judges, except the portion which holds that an indictment is not sufficient, in itself, under the act of Parliament to carry the treaty into effect; and declares that the argument in illustration of the court was not adopted by him; and, consequently, as far as the government was concerned, no inference like that on which my despatch dwelt could be drawn from it. This, taken by itself, might be fairly considered as negativing the ground taken by the court, that the act charged as a crime must be such by the laws of the place where the fugitive criminal is found, as well as of that where it was perpetrated; and would be satisfactory, were it not for the remarks which followed—I allude to those in which he says that "he did not, however, mean to say that in no case whatever which might arise hereafter, would the result of an application for the surrender of a fugitive charged with murder depend in any degree upon the question whether he was a slave endeavoring to escape from his master. By the laws of all countries, the same act of killing did or did not constitute the crime of murder, according to the circumstances of the case, which were often matters of very nice discrimination; and he could very well conceive that, in cases which might arise, the fact of a person's being a slave might materially affect the question of his guilt on a charge of having committed murder. Her Majesty's

government must reserve to itself the liberty of dealing with cases of this kind when they present themselves, and of being governed by circumstances, which cannot be foreseen nor provided for in any general regulations. He was, however, free to say that he did not share the opinion of those who hold that slaves, as such, cannot commit a crime. He regarded them as moral agents, and, of course, to be regarded in that light on a demand for extradition, leaving the consideration due to their condition as such to be decided by the circumstances of each individual case." The amount of these remarks, as applied to this case, is, that the same act which may constitute the crime of murder in the United States, may not constitute it in England; that the fact of the person charged with the commission of the crime being a slave, might materially affect the question of his guilt, according to the circumstances of the case; and that they were matters of nice discrimination; and that the home government must, in consequence, assume to itself the liberty of deciding on cases of the kind.

It is admitted that an act which may constitute the crime of murder in either of the two countries, may not constitute it in the other; not, however, because there is any difference between them in the definition of murder. It results from a different cause, which would seem to require, from the remarks of Lord Aberdeen, some explanation in order to a clear understanding of the subject.

In all such cases, the cause may be traced, it is believed, to the fact that there are acts which are prohibited and made illegal in the two countries respectively, that are not in the other. Whether a case of homicide, in consequence of such act, is murder or not in either, depends, in such cases, on the fact whether the act be prohibited, and illegal or not, in the country where it was committed. If it be illegal, it would; but, if legal, it would not. Thus, in England, the killing of game, unless by certain privileged persons, is prohibited under severe penalties, and made illegal; while in the United States there are no such laws. On the other hand, in many portions of this Union, including the territory of Florida,

domestic servitude is authorized by law, and it is made penal for a slave to resist the authority of his master; while in England it is abolished and prohibited by law. It results from this diversity between the laws of the two countries in those cases, that it would be murder in England if an unauthorized person should kill an individual for attempting to arrest him, save on his own premises; while in a similar case in the United States, where any man may lawfully kill game on his own premises, it would be regarded as justifiable homicide. The reverse would be the fact in the case of domestic servitude. In the portion of the Union where it exists, the act of killing, which would be murder in a slave attempting to escape from the authority of his master, would not be so in England, because the relation which is legal in the former is prohibited in the latter. Other instances might be cited.

Nor is the difference confined to the case of murder. It extends to other crimes enumerated in the treaty. Take, for example, the case of forgery. Its definition is the same in both countries; but in both the acts constituting forgery depend upon particular municipal regulations, and are limited to special cases. Thus, in England, it is made forgery, by particular acts of Parliament, to forge a note of the bank of England, or the public securities of the country, or the stamps on which duties are collected; none of which constitute the crime of forgery by our laws. Examples of like kind might be cited on our side; and to which might be added many more, extending throughout the whole range of criminal legislation in both countries. Similar observations might, with truth, be doubtless made in reference to nearly all the other crimes enumerated in the treaty.

The remarks made by Lord Aberdeen in this connexion, in regard to the difficulties which accrued in the drawing up the extradition treaty between England and France, respecting the term *murder* in English, and *meurtre* in French, it seems to me not relevant. There, the difficulty grew out of the definitions of the two words, which, instead of being the same, (as the word *murder* is in England

and the United States,) were of different significations—the latter comprehending several descriptions of crime which the former did not, and which, therefore, rendered additions to it necessary, in order that the treaty might be made reciprocal in its operation between the two countries.

It is obvious, from the preceding remarks, that the question whether the criminality of the act is to be judged of by the laws of the country where the offence was committed, or that where the fugitive may be found, is one of wide extent, and of first magnitude, in the construction of the treaty. We contend that it must be by the laws of the place where the crime was charged to have been committed, and not that where the fugitive is found; and hold that such construction is in strict conformity with the wording and true intent of the treaty, and that any other involves a palpable absurdity. If our construction should be adopted by the government of her Majesty, though all those nice discriminations and difficulties alluded to by Lord Aberdeen, and which would make it necessary to reserve the decision for the home government, would vanish in this and the numerous other cases, as has been pointed out, on both sides, and which, on any other construction, would make the extradition portion of the treaty in a great measure nugatory; at all events, it is indispensably necessary that we should know what construction her Majesty's government intends to put on the article in question. It would make it, indeed, a one-sided contract, if our government should continue to place on it the construction we have, while her Majesty adopts the one laid down by the Nassau judges.

You are accordingly instructed to call again the attention of her Majesty's government to the subject, and to urge a speedy decision in strong and earnest language.

In limiting my former despatch to the object to which it was confined, it was by no means intended to acquiesce in the construction given by the British authorities to the statute for carrying the extradition article of the treaty into effect,—that an indictment was not of itself sufficient evi-

dence to warrant the arrest of the fugitive criminal; or that, if it did, the statute was consistent with the provisions of the article. On the contrary, the opposite opinion, it seems to me, is the sound one on both points. I limited it as I did, because I believed that the decision on the point it presented would certainly settle that in reference to the indictment; and that a decision could be more readily made on the former than on the latter. But, as they are intimately united, and as we have been disappointed in getting a speedy and satisfactory answer on the former, you are instructed to call the attention of her Majesty's government to, and obtain a decision on, both. Indeed, a decision that an indictment is sufficient evidence to warrant the commitment and delivery of the fugitive criminal, would, in a great measure, decide both points, and supersede the necessity of a former decision of the other, as the presentment of the grand jury must always be founded on the criminality of the act, according to the laws of the place where the crime was committed.

I am, sir, respectfully, your obedient servant,

J. C. Calhoun.

To Edward Everett, esq., *&c.*

Article XXVII, Jay Treaty of 1794

"It is further agreed that His Majesty and the United States, on mutual requisitions, by them respectively, or by their respective Ministers or officers authorized to make the same, will deliver up to justice all persons who, being charged with murder or forgery, committed within the jurisdiction of either, shall seek an asylum within any of the countries of the other, provided that this shall only be done on such evidence of criminality as, according to the laws of the place, where the fugitive or person so charged shall be found, would justify his apprehension and commitment for trial, if the offence had there been committed. The expence of such appre-

hension and delivery shall be borne and defrayed by those who make the requisition and receive the fugitive."

Article X, Webster-Ashburton Treaty of 1842.

"It is agreed that the United States and Her Britannic Majesty shall, upon mutual requisitions by them, or their Ministers, officers, or authorities, respectively made, deliver up to justice all persons who, being charged with the crime of murder, or assault with intent to commit murder, or piracy, or arson, or robbery, or forgery, or the utterance of forged paper, committed within the jurisdiction of either, shall seek an asylum or shall be found within the territories of the other: Provided, that this shall only be done upon such evidence of criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his apprehension and commitment for trial if the crime or offence had there been committed; and the respective judges and other magistrates of the two Governments shall have power, jurisdiction, and authority, upon complaint made under oath, to issue a warrant for the apprehension of the fugitive or person so charged, that he may be brought before such judges or other magistrates, respectively, to the end that the evidence of criminality may be heard and considered; and if, on such hearing, the evidence be deemed sufficient to sustain the charge, it shall be the duty of the examining judge or magistrate to certify the same to the proper executive authority, that a warrant may issue for the surrender of such fugitive. The expense of such apprehension and delivery shall be borne and defrayed by the party who makes the requisition and receives the fugitive."

Blaine-Pauncefote Extradition Convention of 1889.

"Concluded July 12, 1889; ratification advised by the Senate with amendments February 18, 1890; ratified by the President February 25, 1890; ratifications exchanged March 11, 1890; proclaimed March 25, 1890.

Articles.

I. Additional extraditable crimes.
II. Political crimes.
III. Prior offenses.
IV. Delivery of articles seized.
V. Crimes committed in other countries.
VI. Procedure.
VII. Escaped convicts.
VIII. No prior effect.
IX. Ratification; duration.

Whereas by the Tenth Article of the Treaty concluded between the United States of America and Her Britannic Majesty on the ninth day of August, 1842, provision is made for the extradition of persons charged with certain crimes;

And Whereas it is now desired by the High Contracting Parties that the provisions of the said Article should embrace certain crimes not therein specified, and should extend to fugitives convicted of the crimes specified in the said Article and in this Convention;

The said High Contracting Parties have appointed as their Plenipotentiaries to conclude a Convention for this purpose, that is to say:

The President of the United States of America, James G. Blaine, Secretary of State of the United States;

And Her Majesty, the Queen of the United Kingdom of Great Britain and Ireland, Sir Julian Pauncefote, Knight Grand Cross of the Most Distinguished Order of Saint Michael and Saint George, Knight Commander of the Most Honorable Order of the Bath, and Envoy Extraordinary and Minister Plenipotentiary of Her Britannic Majesty to the United States;

Who, after having communicated to each other their respective full powers, found in good and due form, have agreed upon and concluded the following Articles:

Article I.

The provisions of the said Tenth Article are hereby made applicable to the following additional crimes:

1. Manslaughter, when voluntary.

2. Counterfeiting or altering money; uttering or bringing into circulation counterfeit or altered money.

3. Embezzlement; larceny; receiving any money, valuable security, or other property, knowing the same to have been embezzled, stolen, or fraudulently obtained.

4. Fraud by a bailee, banker, agent, factor, trustee, or director or member or officer of any company, made criminal by the laws of both countries.

5. Perjury, or subornation of perjury.

6. Rape; abduction; child-stealing; kidnapping.

7. Burglary; house-breaking or shop-breaking.

8. Piracy by the law of nations.

9. Revolt, or conspiracy to revolt by two or more persons on board a ship on the high seas, against the authority of the master; wrongfully sinking or destroying a vessel at sea, or attempting to do so; assaults on board a ship on the high seas, with intent to do grievous bodily harm.

10. Crimes and offenses against the laws of both countries for the suppression of slavery and slave-trading.

Extradition is also to take place for participation in any of the crimes mentioned in this Convention or in the aforesaid Tenth Article, provided such participation be punishable by the laws of both countries.

Article II.

A fugitive criminal shall not be surrendered, if the offense in respect of which his surrender is demanded be one of a political character, or if he proves that the requisition for his surrender has in fact been made with a view to try or punish him for an offense of a political character.

No person surrendered by either of the High Contracting Parties to the other shall be triable or tried, or be punished for any political crime or offense, or for any act connected therewith, committed previously to his extradition.

If any question shall arise as to whether a case comes within the provisions of this Article, the decision of the authorities of the government in whose jurisdiction the fugitive shall be at the time shall be final.

Article III.

No person surrendered by or to either of the High Contracting Parties shall be triable or be tried for any crime or offense, committed prior to his extradition, other than the offense for which he was surrendered, until he shall have had an opportunity of returning to the country from which he was surrendered.

Article IV.

All articles seized which were in the possession of the person to be surrendered at the time of his apprehension, whether being the proceeds of the crime or offence charged, or being material as evidence in making proof of the crime or offense, shall, so far as practicable, and if the competent authority of the State applied to for the extradition has ordered the delivery thereof, be given up when the extradition takes place. Nevertheless, the rights of third parties with regard to the articles aforesaid shall be duly respected.

Article V.

If the individual claimed by one of the two High Contracting Parties, in pursuance of the present Convention, should also be claimed by one or several other Powers on account of crimes or offenses committed within their respective jurisdictions, his extradition shall be granted to that state whose demand is first received.

The provisions of this Article, and also of Articles II to IV, inclusive, of the present Convention, shall apply to surrender for offenses specified in the aforesaid Tenth Article, as well as to surrender for offenses specified in this Convention.

Article VI.

The extradition of fugitives under the provisions of this Convention and of the said Tenth Article shall be carried out in the United States and in Her Majesty's dominions, respectively, in conformity with the laws regulating extradition for the time being in force in the surrendering State.

Article VII.

The provisions of the said Tenth Article and of this Convention shall apply to persons convicted of the crimes therein respectively named and specified, whose sentence therefor shall not have been executed.

In case of a fugitive criminal alleged to have been convicted of the crime for which his surrender is asked, a copy of the record of the conviction and of the sentence of the court before which such conviction took place, duly authen-

treated, shall be produced, together with the evidence proving that the prisoner is the person to whom such sentence refers.

Article VIII.

The present Convention shall not apply to any of the crimes herein specified which shall have been committed, or to any conviction which shall have been pronounced, prior to the date at which the Convention shall come into force.

Article IX.

This Convention shall be ratified and the ratifications shall be exchanged at London as soon as possible.

It shall come into force ten days after its publication in conformity with the forms prescribed by the laws of the High Contracting Parties, and shall continue in force until one of the other of the High Contracting Parties shall signify its wish to terminate it, and no longer.

In witness whereof the undersigned have signed the same and have affixed thereto their seals.

Done in duplicate at the city of Washington, the twelfth day of June, 188.

[Seal.] JAMES G. BLAINE.
[Seal.] JULIAN PAUNCEFOTE.

Supplementary Extradition Treaty of December 13, 1900.

Concluded December 13, 1900; ratification advised by Senate March 5, 1901; ratified by President March 25, 1901; ratifications exchanged April 22, 1901; proclaimed April 23, 1901.

Article.

I. Extraditable crimes.
II. Extradition convention of June 12, 1889, ratified and confirmed.

The United States of America and His Majesty Edward the Seventh, by the Grace of God, of the United Kingdom of Great Britain and Ireland, being desirous of enlarging the List of Crimes on account of which Extradition may be granted under the Convention con-

cluded between the United States and Her Britainnic Majesty on the 12th of July 1889, with a view to the better administration of justice and the prevention of crime in their respective territories and jurisdictions, have resolved to conclude a Supplementary Convention for this purpose and have appointed as their Plenipotentiaries, to wit:

The President of the United States, the Honorable John Hay, Secretary of State of the United States, and

Her Majesty the Queen of the United Kingdom of Great Britain and Ireland, His Excellency the Right Honorable Lord Pauncefote, Knight Grand Cross of the Most Honorable Order of the Bath, Knight Grand Cross of the Most Distinguished Order of St. Michael and St. George, and Her Majesty's Ambassador Extraordinary and Plenipotentiary to the United States;

Who, after having communicated to each other their respective full powers, which were found to be in due and proper form, have agreed to and concluded the following Articles:

Article I.

The following crimes are added to the list of crimes numbered 1 to 10 in the first Article of the said Convention of July 12, 1889, on account of which extradition may be granted, that is to say:

11. Obtaining money, valuable securities or other property by false pretenses.

12. Wilful and unlawful destruction or obstruction of railroads which endangers human life.

13. Procuring abortion.

Article II.

The present Convention shall be considered as an integral part of the said Extradition Convention of July 12, 1889, and the first Article of the last mentioned Convention shall be read as if the list of crimes therein contained had originally comprised the additional crimes specified and numbered 11 to 13 in the first Article of the present Convention.

The present Convention shall be ratified and the ratifications shall be exchanged either at Washington or London as soon as possible.

It shall come into force ten days after its publication in conformity with the Laws of the High Contracting Parties and it shall continue and terminate in the same manner as the said Convention of July 12, 1889.

In testimony whereof the respective Plenipotentiaries have signed the present Convention in duplicate and have thereunto affixed their seals.

Done at Washington this 13th day of December, 1900.

JOHN HAY [SEAL]
PAUNCEFOTE [SEAL]

Supplementary Extradition Convention of April 12, 1905.

"Concluded April 12, 1905; ratification advised by the Senate December 13, 1905; ratified by the President December 21, 1906; ratifications exchanged December 31, 1906 proclaimed February 12, 1907.

Articles.

I. Extraditable crimes. II. Ratification; duration.

The President of the United States of America and His Majesty the King of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas, Emperor of India, being desirous of enlarging the list of crimes on account of which extradition may be granted under the Conventions concluded between the United States and Great Britain on the 12th July, 1889, and the 13th December, 1900, with a view to the better administration of justice and the prevention of crime in their respective territories and jurisdictions, have resolved to conclude a Supplementary Convention for this purpose and have appointed as their Plenipotentiaries, to wit:

The President of the United States, the Honorable Joseph Hodges Choate, Ambassador Extraordinary and Plenipotentiary of the United States at the Court of his Britannic Majesty:

And his Britannic Majesty, the Most Honorable Henry Charles Keith Petty-Fitzmaurice, Marquess of Lansdowne, His Majesty's Principal Secretary of State for Foreign Affairs;

Who, after having communicated to each other their respective full powers, which were found to be in due and

proper form, have agreed to and concluded the following Articles:

Article I.

The following crimes are added to the list of crimes numbered 1 to 10 in the 1st Article of the said Convention of the 12th July, 1889, and to the list of crimes numbered 11 to 13 in Article I of the Supplementary Convention concluded between the United States and Great Britain on the 13th December, 1900; that is to say:

14. Bribery, defined to be the offering, giving or receiving of bribes made criminal by the laws of both countries.

15. Offenses, if made criminal by the laws of both countries, against bankruptcy law.

Article II.

The present Convention shall be considered as an integral part of the said Extradition Conventions of the 12th July, 1889, and the 13th December, 1900, and the 1st Article of the said Convention of the 12th July, 1889, shall be read as if the lists of crimes therein contained had originally comprised the additional crimes specified and numbered 14 and 15 in the 1st Article of the present Convention.

The present Convention shall be ratified, and the ratifications shall be exchanged either at Washington or London as soon as possible.

It shall come into force ten days after its publication in conformity with the laws of the High Contracting Parties, and it shall continue and terminate in the same manner as the said Convention of the 12th July, 1889.

In testimony whereof the respective Plenipotentiaries have signed the present Convention in duplicate, and have thereunto affixed their seals.

Done at London, this 12th day of April, 1905.

[L. S.] Joseph H. Choate.
[L. S.] Lansdowne.

Dawes-Simon Extradition Treaty of 1932, with Presidential Proclamation.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION.

Whereas an extradition treaty between the United States of America and Great Britain was concluded and signed by their respective Plenipotentiaries at London on December 22, 1931, the original of which treaty is word for word as follows:

The President of the United States of America,

And his Majesty the King of Great Britain, Ireland and the British Dominions beyond the Seas, Emperor of India;

Desiring to make more adequate provision for the reciprocal extradition of criminals,

Have resolved to conclude a Treaty for that purpose, and to that end have appointed as their plenipotentiaries:

The President of the United States of America:

General Charles G. Dawes, Ambassador Extraordinary and Plenipotentiary of the United States of America at the Court of St. James;

And his Majesty the King of Great Britain, Ireland and the British Dominions beyond the Seas, Emperor of India:

for Great Britain and Northern Ireland:

The Right Honourable Sir John Simon, G. C. S. I., M. P., His Principal Secretary of State for Foreign Affairs;

who, having communicated their full powers, found in good and due form, have agreed as follows:

Article 1.

The High Contracting Parties engage to deliver up to each other, under certain circumstances and conditions stated in the present Treaty, those persons who, being accused or convicted of any of the crimes or offences enumerated in Article 3, committed within the jurisdiction of the one Party, shall be found within the territory of the other Party.

Article 2.

For the purposes of the present Treaty the territory of His Britannic Majesty shall be deemed to be Great Britain and Northern Ireland, the Channel Islands and the Isle of Man, and all parts of His Britannic Majesty's dominions overseas other than those enumerated in Article 14, together with the territories enumerated in Article 16 and any territories to which it may be extended under Article 17. It is understood that in respect of all territory of His Britannic Majesty as above defined other than Great Britain and Northern Ireland, the Channel Islands, and the Isle of Man, the present Treaty shall be applied so far as the laws permit.

For the purposes of the present Treaty the territory of the United States shall be deemed to be all territory wherever situated belonging to the United States, including its dependencies and all other territories under its exclusive administration or control.

Article 3.

Extradition shall be reciprocally granted for the following crimes or offences:

1. Murder (including assassination, parricide, infanticide, poisoning), or attempt or conspiracy to murder.
2. Manslaughter.
3. Administering drugs or using instruments with intent to procure the miscarriage of women.
4. Rape.
5. Unlawful carnal knowledge, or any attempt to have unlawful carnal knowledge, of a girl under 16 years of age.
6. Indecent assault if such crime or offence be indictable in the place where the accused or convicted person is apprehended.
7. Kidnapping or false imprisonment.
8. Child stealing, including abandoning, exposing or unlawfully detaining.
9. Abduction.
10. Procuration: that is to say the procuring or transporting of a woman or girl under age, even with her consent, for immoral purposes, or of a

woman or girl over age, by fraud, threats, or compulsion, for such purposes with a view in either case to gratifying the passions of another person provided that such crime or offence is punishable by imprisonment for at least one year or by more severe punishment.

11. Bigamy.
12. Maliciously wounding or inflicting grievous bodily harm.
13. Threats, by letter or otherwise, with intent to extort money or other things of value.
14. Perjury, or subornation of perjury.
15. Arson.
16. Burglary or housebreaking, robbery with violence, larceny or embezzlement.
17. Fraud by a bailee, banker, agent, factor, trustee, director, member, or public officer of any company, or fraudulent conversion.
18. Obtaining money, valuable security, or goods, by false pretences; receiving any money, valuable security, or other property, knowing the same to have been stolen or unlawfully obtained.
19. (a) Counterfeiting or altering money, or bringing into circulation counterfeited or altered money.
    (b) Knowingly and without lawful authority making or having in possession any instrument, tool, or engine adapted and intended for the counterfeiting of coin.
20. Forgery, or uttering what is forged.
21. Crimes or offences against bankruptcy law.
22. Bribery, defined to be the offering, giving or receiving of bribes.
23. Any malicious act done with intent to endanger the safety of any persons travelling or being upon a railway.
24. Crimes or offences or attempted crimes or offences in connection with the traffic in dangerous drugs.
25. Malicious injury to property, if such crime or offence be indictable.
26. (a) Piracy by the law of nations.
    (b) Revolt, or conspiracy to revolt, by two or more persons on board a ship on the high

seas against the authority of the master; wrongfully sinking or destroying a vessel at sea, or attempting to do so; assaults on board a ship on the high seas, with intent to do grievous bodily harm.

27. Dealing in slaves.

Extradition is also to be granted for participation in any of the aforesaid crimes or offences, provided that such participation be punishable by the laws of both High Contracting Parties.

Article 4.

The extradition shall not take place if the person claimed has already been tried and discharged or punished, or is still under trial in the territories of the High Contracting Party applied to, for the crime or offence for which his extradition is demanded.

If the person claimed should be under examination or under punishment in the territories of the High Contracting Party applied to for any other crime or offence, his extradition shall be deferred until the conclusion of the trial and the full execution of any punishment awarded to him.

Article 5.

The extradition shall not take place if, subsequently to the commission of the crime or offence or the institution of the penal prosecution or the conviction thereon, exemption from prosecution or punishment has been acquired by lapse of time, according to the laws of the High Contracting Party applying or applied to.

Article 6.

A fugitive criminal shall not be surrendered if the crime or offence in respect of which his surrender is demanded is one of a political character, or if he proves that the requisition for his surrender has, in fact, been made with a view to try or punish him for a crime or offence of a political character.

Article 7.

A person surrendered can in no case be kept in custody or be brought to trial in the territories of the High Contracting Party to whom the surrender has been made for any other crime or offence, or on account of any other matters than those for which the extradition shall have taken place, until he has been restored, or has had an opportunity of returning, to the territories of the High Contracting Party by whom he has been surrendered.

This stipulation does not apply to crimes or offences committed after the extradition.

Article 8.

The extradition of fugitive criminals under the provisions of this Treaty shall be carried out in the United States and in the territory of His Britannic Majesty respectively, in conformity with the laws regulating extradition for the time being in force in the territory from which the surrender of the fugitive criminal is claimed.

Article 9.

The extradition shall take place only if the evidence be found sufficient, according to the laws of the High Contracting Party applied to, either to justify the committal of the prisoner for trial, in case the crime or offence had been committed in the territory of such High Contracting Party, or to prove that the prisoner is the identical person convicted by the courts of the High Contracting Party who makes the requisition, and that the crime or offence of which he has been convicted is one in respect of which extradition could, at the time of such conviction, have been granted by the High Contracting Party applied to.

Article 10.

If the individual claimed by one of the High Contracting Parties in pursuance of the present Treaty should be also claimed by one or several other Powers on account of other crimes or offences committed within their respective jurisdictions, his extradition shall be granted to the Power whose claim is earliest in date, unless such claim is waived.

Article 11.

If sufficient evidence for the extradition be not produced within two months from the date of the apprehension of the fugitive, or within such further time as the High Contracting Party applied to, or the proper tribunal of such High Contracting Party, shall direct, the fugitive shall be set at liberty.

Article 12.

All articles seized which were in the possession of the person to be surrendered at the time of his apprehension, and any articles that may serve as a proof of the crime or offence shall be given up when the extradition takes place, in so far as this may be permitted by the law of the High Contracting Party granting the extradition.

Article 13.

All expenses connected with the extradition shall be borne by the High Contracting Party making the application.

Article 14.

His Britannic Majesty may accede to the present Treaty on behalf of any of his Dominions hereafter named—that is to say, the Dominion of Canada, the Commonwealth of Australia (including for this purpose Papua and Norfolk Island), the Dominion of New Zealand, the Union of South Africa, the Irish Free State, and Newfoundland—and India. Such accession shall be effected by a notice to that effect given by the appropriate diplomatic representative of His Majesty at Washington which shall specify the authority to which the requisition for the surrender of a fugitive criminal who has taken refuge in the Dominion concerned, or India, as the case may be, shall be addressed. From the date when such notice comes into effect the territory of the Dominion concerned or of India shall be deemed to be territory of His Britannic Majesty for the purposes of the present Treaty.

The requisition for the surrender of a fugitive criminal who has taken refuge in any of the above-mentioned Do-

minions or India, on behalf of which His Britannic Majesty has acceded, shall be made by the appropriate diplomatic or consular officer of the United States of America.

Either High Contracting Party may terminate this Treaty separately in respect of any of the above-mentioned Dominions or India. Such termination shall be effected by a notice given in accordance with the provisions of Article 18.

Any notice given under the first paragraph of this Article in respect of one of His Britannic Majesty's Dominions may include any territory in respect of which a mandate on behalf of the League of Nations has been accepted by his Britannic Majesty, and which is being administered by the Government of the Dominion concerned; such territory shall, if so included, be deemed to be territory of His Britannic Majesty for the purposes of the present Treaty. Any notice given under the third paragraph of this Article shall be applicable to such mandated territory.

Article 15.

The requestion for the surrender of a fugitive criminal who has taken refuge in any territory of His Britannic Majesty other than Great Britain and Northern Ireland, the Channel Islands, or the Isle of Man, or the Dominions or India mentioned in Article 14, shall be made to the Governor, or chief authority, of such territory by the appropriate consular officer of the United States of America.

Such requisition shall be dealt with by the competent authorities of such territory; provided, nevertheless, that if an order for the committal of the fugitive criminal to prison to await surrender shall be made, the said Governor or chief authority may, instead of issuing a warrant for the surrender of such fugitive, refer the matter to His Majesty's Government in the United Kingdom of Great Britain and Northern Ireland.

Article 16.

This Treaty shall apply in the same manner as if they were Possessions of His Britannic Majesty to the following British Protectorates, that is to say, the Bechuanaland

Protectorate, Gambia Protectorate, Kenya Protectorate, Nigeria Protectorate, Northern Rhodesia, Northern Territories of the Gold Coast, Nyasaland, Sierra Leone Protectorate, Solomon Islands Protectorate, Somaliland Protectorate, Swaziland, Uganda Protectorate and Zanzibar, and to the following territories in respect of which a mandate on behalf of the League of Nations has been accepted by His Britannic Majesty, that is to say, Cameroons under British mandate, Togoland under British mandate, and the Tanganyika Territory.

Article 17.

If after the signature of the present Treaty it is considered advisable to extend its provisions to any British Protectorates other than those mentioned in the preceding Article or to any British-protected State, or to any territory in respect of which a mandate on behalf of the League of Nations has been accepted by His Britannic Majesty, other than those mandated territories mentioned in Articles 14 and 16, the stipulations of Articles 14 and 15 shall be deemed to apply to such Protectorates or States or mandated territories from the date and in the manner prescribed in the notes to be exchanged for the purpose of effecting such extension.

Article 18.

The present Treaty shall come into force ten days after its publication, in conformity with the forms prescribed by the laws of the High Contracting Parties. It may be terminated by either of the High Contracting Parties by a notice not exceeding one year and not less than six months.

In the absence of an express provision to that effect, a notice given under the first paragraph of this Article shall not affect the operation of the Treaty as between the United States of America and any territory in respect of which notice of accession has been given under Article 14.

The present Treaty shall be ratified, and the ratifications shall be exchanged at London as soon as possible.

On the coming into force of the present treaty the provisions of Article 10 of the treaty of the 9th August, 1842, of the Convention of the 12th July, 1889, of the supplementary Convention of the 13th December, 1900, and of the

supplementary Convention of the 12th April, 1905, relative to extradition, shall cease to have effect, save that in the case of each of the Dominions and India, mentioned in Article 14, those provisions shall remain in force until such Dominion or India shall have acceded to the present treaty in accordance with Article 14 or until replaced by other treaty arrangements.

In faith whereof the above-named plenipotentiaries have signed the present Treaty and have affixed thereto their seals.

Done in duplicate at London this twenty-second day of December, 1931.

[SEAL] CHARLES G DAWES
[SEAL] JOHN SIMON

AND WHEREAS, the said treaty has been duly ratified on both parts, and the ratifications of the two Governments were exchanged at London on the fourth day of August, one thousand nine hundred and thirty-two;

NOW, THEREFORE, be it known that I, Herbert Hoover, President of the United States of America, have caused the said treaty to be made public, to the end that the same and every article and clause thereof may be observed and fulfilled with good faith by the United States of America and the citizens thereof.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the seal of the United States of America to be affixed.

DONE at the city of Washington this ninth day of August in the year of our Lord one thousand
[SEAL] nine hundred and thirty-two, and of the Independence of the United States of America the one hundred and fifty-seventh.

HERBERT HOOVER

By the President:
HENRY L STIMSON
Secretary of State.

State statutes making it a crime to receive property knowing it to have been obtained fraudulently or by false pretenses:

State	*Statutes*
ARKANSAS	Crawford Moses Digest of Statutes of 1921, Sec. 2449 (Obtaining by false pretense, larceny); sec. 2493 (Receiving stolen property).
CALIFORNIA	Penal Code of 1931, Sec. 484 (Obtaining by false pretense, theft); sec. 496 (Receiving stolen property).
INDIANA	Burns' Annotated Statutes of 1926, Sec. 2465.
LOUISIANA	Code of Criminal Procedure and Criminal Statutes of 1932, Sec. 1306.
MASSACHUSETTS	General Laws of 1932, Chap. 266, Sec. 60.
MINNESOTA	Mason's Statutes of 1927, Sec. 10358 (Obtaining by false pretense, larceny), sec. 10374 (Receiving stolen property).
NEVADA	Compiled Laws of 1929, Sec. 10543, as amended by L. 1931, ch. 117, sec. 1.
NEW JERSEY	Sec. 52-166 c (1) of 1925-1930 Supplement to Compiled Statutes of 1911.
NEW YORK	Penal Law, Sec. 1290 (Obtaining by false pretense, larceny); sec. 1308 (Receiving stolen property).
NORTH CAROLINA	Code of 1931. Sec. 4277 (Obtaining by false pretense, a felony); sec. 4250 (Receiving property the taking of which is a felony).

State	*Statutes*
OHIO	Throckmorton's Annotated Code of 1930, Sec. 12450.
RHODE ISLAND	General Laws of 1923, Sec. 6072 (Obtaining by false pretense, larceny); sec. 6070, as amended by L. 1928, ch. 1208, p. 214 (Receiving stolen property).
TENNESSEE	Code of 1932, Sec. 10949, 10950.
VIRGINIA	Code of 1930, Sec. 4459 (Obtaining by false pretense, larceny); sec. 4448 (Receiving stolen property).
WEST VIRGINIA	Code of 1931, page 1469, ch. 61, sec. 24 (Obtaining by false pretense, larceny); page 1467, ch. 61, sec. 18 (Receiving stolen property).
WYOMING	Revised Statutes of 1931, Sec. 32-318.

Some states have statutes which provide that obtaining property by false pretenses or fraud "shall be punished as for larceny", and also statutes making it a crime to receive stolen property, viz:

ALABAMA	Code of 1923, Secs. 4131, 4912.
IDAHO	Code of 1932, Secs. 17-3902 and 17-3512.
KANSAS	Revised Statutes of 1923; Secs. 21-551, and 21-549.
MISSOURI	Revised Statutes of 1929, Secs. 4095 and 4083.
MONTANA	Penal Code of 1921, Secs. 11410 and 11388.
UTAH	Compiled Laws of 1917; Secs. 8344 and 8297.